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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weekly note

American Armored Car, Ltd. (2-CA-33316, et al.; 336 NLRB No. 81) Elmsford, NY July 11, 2003. The Board considered the administrative law judge's findings that the Respondent unlawfully discharged employees Fernando Miranda, Leonard Miles, and John Verderber on September 27, October 17 and 19, 2000, respectively, because of their activities for the United Federation of Security Officers, Inc., and affirmed her unlawful discharge finding with regard to Miranda only. Chairman Battista did not decide whether the Respondent gave Miranda permission to be absent on September 26, 2000, finding that, assuming the Respondent did not give Miranda permission to be absent, its discharge of Miranda constituted disparate treatment relative to the discipline imposed on other employees for comparable misconduct. [HTML] [PDF]

The Board agreed with the judge that the General Counsel established a prima facie case that the union activities of Miles and Verderber were a motivating factor in the Respondent's decision to discharge them. It found however that the Respondent

proved that it would have discharged the two employees even if they had not engaged in union activities for refusing to take a polygraph test as part of the Respondent's investigation into the loss of a bag containing $25,000 in cash. A customer notified the Respondent that one of the Respondent's crews had picked up the bag for delivery to the customer's bank and that the money had not been deposited in the bank. The Board noted that the Respondent's use of polygraphs to investigate the loss followed the standard industry practice and that Miles and Verderber had access to the missing money. Miles had signed for the missing $25,000 bag and he and Verderber worked on the truck that transported the missing bag immediately after Miles signed for it.

(Chairman Battista and Members Liebman and Acosta participated.)

Charges filed by the United Federation of Security Officers, Inc.; complaint alleged violation of Section 8(a)(1) and (3). Hearing at New York, May 22-24, 2001. Adm. Law Judge Margaret M. Kern issued her decision Dec. 31, 2001.

* * *

Palagonia Bakery Co., Inc. (29-CA-23632, et al., 29-RC-9507; 339 NLRB No. 74) Brooklyn, NY July 10, 2003. In the absence of exceptions, the Board adopted the administrative law judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act and engaged in conduct that interfered with the election held in Case 29-RC-9507 by, among others, interrogating employees about their activities for Food & Commercial Workers Local 348-S, promising employees wage increases and other improved working conditions if they abandoned their support for the Union, threatening employees with plant closure if they supported or voted for the Union, and discharging employees because of their union activities. It also adopted the judge's recommendation overruling the Respondent's election objections. [HTML] [PDF]

The Board affirmed the judge's recommendation sustaining the challenges to the ballots of Uriel Londono and Patricia Palagonia and overruling the challenges to the ballots of Mario Arroyave, Leonard Pitter, Frank Sigismondi, Alexander Justi, and Gibbs Saintvil. It found no merit in the Union's exceptions to the judge's findings that Arroyave, Pitter, Sigismondi, Justi, and Saintvil are not statutory supervisors. Accordingly, the Board directed the Regional Director to open and count their ballots and to issue a revised tally of ballots and the appropriate certification. In the event the Union does not receive a majority of the valid votes counted, the Board ordered that the election be set aside and a new election ordered due to the Respondent's objectionable conduct.

(Chairman Battista and Members Liebman and Acosta participated.

Charges filed by Food & Commercial Workers Local 348-S; complaint alleged violation of Section 8(a)(1) and (3). Hearing held Feb. 28, March 2, 8, and 9, 2001. Adm. Law Judge Steven Fish issued his decision Nov. 2, 2001.

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River City Elevator Co., Inc. (25-CA-27125-1, 25-RC-9901; 339 NLRB No. 82) Evansville, IN July 11, 2003. The Board, in this supplemental decision, vacated its earlier decision and order reported at 333 NLRB No. 67 (2001), reopened the underlying representation proceeding, Case 25-RC-9901, set aside the election, and remanded the case to the Regional Director for the purpose of conducting a second election. In the prior decision, the Board found that the Respondent violated Section 8 (a)(5) and (1) of the Act by refusing the Union's request to bargain and to provide information following the Union's certification as exclusive representative and ordered the Respondent to recognize and bargain with the Elevator Constructors International. [HTML] [PDF]

The Respondent petitioned the Seventh Circuit for review of the Board's Order, arguing that the Board erred in overruling objections to the election that resulted in the Union's certification. The Board filed a cross-application for enforcement. On May 13, 2002, the court denied enforcement of the Board's Order, holding that the Union's preelection offer of mechanic's cards to all unit employees, whether or not they completed the requisite training, violated the dictates of *NLRB v. Savair Mfg. Co.,* 414 U.S. (973) 270, *NLRB v. River City Elevator Co.,* 289 F.3d at 1033. The court concluded: "In the instant case, where representation was decided by one vote and gifts of substantial value were offered by the Union as part of its campaign, we find that laboratory conditions did not exist."

On remand from the court, the Respondent argued that a second election should not be held without a new showing of interest. It contended that (1) the Union's objectionable conduct tainted the original showing of interest and has not been remedied, and (2) the original showing of interest is stale in light of the passage of time since the election and the turnover in the bargaining unit, where only two of the original seven employees remain.

After review of the record and the parties' statements of position, the Board wrote: "...we conclude that the most accurate, fair, and efficient way to resolve the question concerning representation originally raised in this case is simply to continue with the Board's practice of conducting another election without requiring a new showing of interest. This best permits the employees to choose whether they wish to organize or to refrain therefrom."

(Members Schaumber, Walsh, and Acosta participated.)

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Saginaw Control and Engineering, Inc. (7-CA-43177(1), et al.; 339 NLRB No. 76) Saginaw, MI July 11, 2003. The Board affirmed the administrative law judge's findings, with a few exceptions and some different reasoning, that the Respondent engaged in misconduct that began during the Steelworkers 's organizing campaign and continued throughout the certification year, including unlawfully withdrawing recognition from the Union and other violations of Section 8(a)(1), (3) and (5) of the Act. It agreed that an antiunion petition signed by a majority of the unit employees, was tainted by the Respondent's numerous unremedied violations, that the Respondent cannot rely on the petition as a basis for withdrawing recognition, and that an affirmative bargaining order is warranted to remedy the unlawful withdrawal of recognition. [HTML] [PDF]

The judge also found the Respondent's withdrawal of recognition unlawful because the employee petition was signed during the Union's initial certification year. See *Chelsea Industries,* 331 NLRB 1648 (2000), enfd. 285 F.3d 1073 (D.C. Cir. 2002) (employer may not withdraw recognition based on an antiunion petition circulated and presented to the employer during the certification year). Chairman Battista and Member Schaumber did not pass on this rationale; Member Walsh agreed with the judge that the withdrawal of recognition was also unlawful under Chelsea.

The Board, in agreeing with the judge that the Respondent violated Section 8(a)(1) by issuing a letter to employees informing them that they were required to report for work regardless of a strike if they valued their employment, relied only on its finding that the letter effectively prohibited employees from striking and made a veiled threat that they would lose their jobs by doing so. It agreed, for the reasons stated by the judge, that the Respondent violated Section 8(a)(3) and (1) by giving employee Greg Kennedy a poor performance evaluation because of his union activity and issuing written discipline to employees Nick Herzberg, Wayne Tornberg, and Patrick Maziarz for talking.

Agreeing with the judge that the Respondent violated Section 8(a)(1) by asking Kennedy to remove prounion posters from his company locker, the Board noted that the Respondent discriminatorily removed union posters while allowing other, nonwork posters. Chairman Battista and Member Schaumber did not reach the issue whether, absent disparate treatment, the Respondent would have to show special circumstances for requiring removal of union posters on the locker. Member Walsh would find the violation for the additional reason that the Respondent failed to show special circumstances for requiring Kennedy to remove the union posters.

Contrary to the judge, the Board found that the Respondent, through its president and CEO, Fred May, did not violate Section 8(a)(1) by soliciting Patrick Maziarz to persuade other employees to vote against the Union in the June 8, 2000 election; and that the Respondent did not violate Section 8(a)(3) and (1) by denying overtime opportunities to Kennedy because of his union activity or Section 8(a)(5) and (1) by refusing to provide information on incidents of discipline for talking and copies of sample agreements "in the manufacturing sector" with a duration of less than 2 years. Member Walsh agreed with the judge that the Respondent violated Section 8(a)(5) and (1) by failing to provide the sample agreements.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by the Steelworkers; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Saginaw, Nov. 7-9, 2001 and Jan. 15-16, 2002. Adm. Law Judge Earl E. Shamwell Jr. issued his decision July 17, 2002.

* * *

West Penn Power Co. and the Potomac Edison Co. d/b/a Allegheny Power, et al., (6-CA-31003, et al.; 339 NLRB No. 77) Greensburg, PA July 11, 2003. The Board agreed with the administrative law judge's findings that the Respondent failed to adequately respond to information requests from the Union regarding outside contractors and the Itron/Honeywell subcontract in violation of Section 8(a)(5) and (1) of the Act, and that the Respondent did not unlawfully fail to provide information about foreign utilities and resource sharing employees working 10- hour days. It reversed the judge's findings that the Respondent unlawfully failed to respond timely to requests regarding meters, customers, and meter readers in Cumberland and Oakland, MD and employee Phil Cosner. The Board also disagreed with the judge's remedial order provision requiring the parties to bargain about the level of detail and time period of data to be provided and found instead that the appropriate remedy is to provide the information. [HTML] [PDF]

Member Walsh, dissenting in part, would find that the Respondent violated the Act by refusing to provide the Union with the investigative report involving Phil Cosner's altercation with another employee. He asserted that in determining whether an employer has met its burden, the first factor to be considered is whether the information sought is sensitive or confidential in nature. *Detroit Edison Co. v. NLRB,* 440 U.S. 301, 319-320 (1979); *New Jersey Bell v. NLRB,* 720 F.2d 789, 791 (3d Cir. 1983). He wrote: "The record in this case does not support finding that the investigative report contained information of a sensitive nature. Although the Respondent has asserted the confidential and sensitive nature of the data repeatedly, there is simply no evidence in the record supporting that claim."

While agreeing with his colleagues' decision in all other respects, Member Walsh found it unnecessary to pass on the issues of whether the Respondent violated Section 8(a)(5) by failing to timely provide (i) the survey on other utilities' pay rates for foreign utility work, and (ii) the Maryland meter readers information. He deemed the finding of such additional violations would be cumulative and would not affect the Order.

Chairman Battista and Member Schaumber disagreed with Member Walsh's assertion that the judge dismissed the allegation regarding Cosner solely on the grounds of non-relevance, saying "the record strongly suggests that the judge *did* consider the [Respondent's] confidentiality defense and accepted it." They added: "[T]he Respondent provided the investigative report to the judge. The judge reviewed it in camera. He determined that the Respondent's November 9, 2000 letter, which summarized the contents of the investigative report accommodated the Union's need for the information while preserving from disclosure the report itself."

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Utility Workers Local 102; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Pittsburgh, Jan. 30-31, 2001. Adm. Law Judge Jerry M. Hermele issued his decision May 10, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Voca Corp. (Service Employees [SEIU] District 1199) Louisville, KY, July 7, 003. 9-CA-38441; JD-71-03, Judge William G. Kocol.

Lamar Central Outdoor, d/b/a Lamar Advertising of Hartford (an Individual) Windsor, CT July 7, 2003. 34-CA-10254; JD (NY)-30-03, Judge Michael A. Marcionese.

Curran & Co. (Carpenters Local 1510) Marquette, MI July 8, 2003. 30-CA-16296-1, 30-RC-6507; JD-73-03, Judge David L. Evans.

Flowserve Corp. (Steelworkers Local 9404) Phillipsburg, NJ July 10, 2003. 22-CA-25250, et al.; JD(NY)-37-03, Judge Steven Davis.

Northwest Graphics, Inc. (Graphic Communications Workers Local 6-505M) St. Charles, MO July 10, 2003. 14-CA-27011; JD-20-03, Judge Margaret M. Kern.

Madison Bosch Construction, LLC (Carpenters Southeastern Regional Council) Savannah, GA July 9, 2003. 10-CA-34182, et al.; JD(ATL)-48-03, Judge George Carson II.

United Cerebral Palsy Association of Westchester County (Needletrades Employees [UNITE] White Plains, NY July 9, 2003. 2-CA-34555-1, et al.; JD(NY)-36-03, Judge Raymond P. Green.

Quality Mechanical Insulation, Inc. (Asbestos Workers Local 73) Phoenix AZ July 7, 2003. 28-CA-18031-1, et al.; JD(SF)-45-03. Judge Gregory Z. Meyerson.

Alan Ritchey, Inc. (an Individual) Valley View, TX July 3, 2003. 28-CA-18282, et al.; JD(SF)-44-03, Judge Gerald A. Wacknov.

Sunshine Piping, Inc. (Plumbers Local 366) Cedar Grove, FL June 30, 2003. 15- CA-16781; JD(ATL)-45-03, Judge Margaret G. Brakebusch.

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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 answer the complaint.)

Sprinturf, Inc. (The Ohio and Vicinity Regional Council of Carpenters) (8- CA-33398; 339 NLRB No. 78) Wayne, PA July 9, 2003.