

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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August 8, 2003

W-2907

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Press Release: [\(R-2503\)](#) H. Lee Einsel, Jr. is Named NLRB Special Counsel



A&E Foods Co. 1, Inc., d/b/a Best Yet Market (29-CA-24995; 339 NLRB No. 104) Astoria, NY July 29, 2003. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) of the Act by directing Union handbillers and pickets to remove themselves from the shopping center parking lot in Queens County, NY; informing the owner of the shopping center (where the Respondent leases a store) about the Union's lawful picketing and handbilling with an object of interfering with such activities; causing the owner of the shopping center to issue a letter to cause the Union handbillers and pickets to leave the shopping center parking lot; and threatening Union handbillers and pickets that it would call the police if they did not remove themselves from the shopping center parking lot. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Acosta agreed with the judge that, under the precedent of *Wild Oats Community Markets*, 336 NLRB No. 14 (2001), the Respondent violated the Act by imploring the property manager, Elias Properties, to expel union representatives from Elias' parking lot. They noted, however, that the Respondent did not challenge that precedent directly and in the absence of such a challenge, accepted *Wild Oats* as controlling precedent, and affirmed the judge's finding of a violation, adding: "Such affirmance should not be construed as an endorsement of that precedent."

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by Food & Commercial Workers Local 1500; complaint alleged violation of Section 8(a)(1). Hearing at Brooklyn on Oct. 2, 2002. Adm. Law Judge Steven Davis issued his decision Jan. 14, 2003.

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Comar, Inc. (4-CA-28570; 339 NLRB No. 110) Vineland and Buena, NJ July 31, 2003. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Union concerning the effects on employees of the Respondent's relocation of its applicator division from Vineland to Buena, New Jersey. It found merit in the General Counsel's contention that the judge failed, pursuant to *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), to extend the limited backpay remedy to all unit employees, including those who transferred to the Respondent's Buena facility. Accordingly, the Board modified the judge's remedy to conform to its Order. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Flint Glass Workers; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Philadelphia, PA, May 21-22, 2001. Adm. Law Judge William G. Kocol issued his decision Aug. 2, 2001.

* * *

Contract Carriers Corp., Bucko Construction Co. and Vector Transport Corp., A Single Integrated Enterprise (13-CA-39900, 39932; 339 NLRB No. 103) Gary, IN July 29, 2003. The Board affirmed the administrative law judge's findings that Respondent Contract Carriers violated Section 8(a)(5) and (1) of the Act by refusing to provide requested information to the Union and by refusing to meet with Steven Parks, the Union's designated representative, for processing grievances; and that Respondent Vector Transport violated Section 8(a)(5) and (1) by refusing to meet with Steven Parks for grievances processing. Contrary to the judge and Chairman Battista, Members Liebman and Walsh held that the Respondents' failure and refusal to attend contractual grievance hearings for the purpose of resolving several grievances violated Section 8(a)(5) and (1). [\[HTML\]](#) [\[PDF\]](#)

The judge held that the Respondents' presence was not necessary for the grievances to be heard by the contractual review boards, and that the Union, although it chose not to, could have pursued the grievances to arbitration without the Respondents' participation in the hearings. He also noted there was no evidence that the Respondents' refusal to attend the scheduled hearings prejudiced or precluded the Union from processing the grievances.

Members Liebman and Walsh wrote that the Respondents' failure to attend any of the five scheduled grievance hearings, spanning a five-month period, occurred in the context of related unfair labor practices clearly intended to frustrate the

operation of the grievance process. They also found that the Respondents' failure to participate in the grievance procedures and attend grievance hearings, particularly in light of the refusals to provide information and deal with the Union's designated representative, hindered the constructive resolution of the parties' dispute and violated the Act.

In his partial dissenting opinion, Chairman Battista agreed with the judge that the Respondents' refusal to attend the scheduled grievance hearings was not unlawful and would dismiss this allegation of the complaint. He contended that the Union's contracts with Contract Carriers and Vector Transport, although separate, provide that if the parties cannot settle a grievance, it is referred to a grievance board, consisting of three employer members and three union members. In the event that one of the parties fails to appear and fails to give appropriate notice of such nonappearance, the board shall hear the case and make a decision based on the evidence presented. Chairman Battista found that in the absence of Employer opposition, there is a significant chance that the Union would prevail and, even if it did not, the Union could go to the next step, which is arbitration.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Teamsters Local 142; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Chicago on May 20, 2002. Adm. Law Judge C. Richard Miserendino issued his decision July 2, 2002.

* * *

Elevator Constructors Local 2 (Unitec Elevator Services Co.) (13-CB-16499-1; 339 NLRB No. 114) Des Plaines, IL July 31, 2003. The Board affirmed the administrative law judge's conclusion that the Union's initiation of discipline against supervisor union member Charles Hillstrom did not violate Section 8(b)(1)(B) of the Act. It found it unnecessary to decide whether Hillstrom functioned as a representative of the Employer for the purposes of collective-bargaining or the adjustment of grievances, explaining that even assuming that Hillstrom was such an employer representative, the General Counsel failed to establish that the disciplinary proceedings initiated against Hillstrom restrained or coerced an employer in the selection of its representative within the meaning Section 8(b)(1)(B). [\[HTML\]](#) [\[PDF\]](#)

In the absence of exceptions, the Board affirmed the judge's finding that the Union violated Section 8(b)(1)(A) by maintaining, in conjunction with a collective-bargaining agreement containing a union-security clause, a provision in its constitution and bylaws requiring the payment of members' fines before dues or before procuring a current working card.

The Board modified the judge's recommended Order to omit the requirement related to notice mailing in the event that the Employer or the Union goes out of business or closes the facility involved in this proceeding. See *L.D. Kichler Co.*, 335 NLRB No. 106 (2001). Consistent with the Board's standard remedial practice, the Order was further modified to require the Respondent to provide sufficient copies of the notice to the Regional Director for posting by the Employer, if willing, and to require the Respondent within 21 days after service by the Region, to file with the Regional Director a sworn certification of a responsible official attesting to the steps the Respondent has taken to comply with the Order.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Charles Hillstrom, an Individual; complaint alleged violation of Section 8(b)(1)(A) and (B). Hearing at Chicago on June 11, 2001. Adm. Law Judge Jerry M. Hermele issued his decision Sept. 21, 2001.

* * *

Fantasia Fresh Juice Co. (13-CA-38526(E); 339 NLRB No. 112) Rosemont, IL July 31, 2003. Chairman Battista and Member Liebman adopted the administrative law judge's recommendation and ordered that the Applicant, Fantasia Fresh Juice Co., be awarded the sum of \$10,680.68 pursuant to its application for an award under the Equal Access to Justice Act (EAJA), plus additional compensable fees and expenses incurred since the period covered by the Applicant's last EAJA application submitted on June 6, 2002. [\[HTML\]](#) [\[PDF\]](#)

Pursuant to *C. Factotum, Inc.*, 337 NLRB No. 1 (2001), the majority agreed with the judge that the General Counsel's "overall position in the case," was not substantially justified. The General Counsel chose to file exceptions as to every alleged violation

but Chairman Battista and Member Liebman noted that the exceptions could only be characterized, in their totality, primarily as an attempt to reverse credibility findings.

Dissenting, Member Walsh would not award legal fees and expenses to the Applicant. He agreed that the General Counsel was substantially justified in pursuing the complaint through trial but unlike his colleagues, believes that the General Counsel was also justified in filing exceptions to the judge's decision. Member Walsh found that the General Counsel's credibility-based exceptions were intertwined with the law-based exceptions and, in his view, did not require the Applicant to file any briefs it would not otherwise have filed, or to take any other actions it would not otherwise have taken and did not cause the Employer to incur substantial expenses it would not have otherwise had to incur.

In the prior decision, 335 NLRB No. 61 (2001), the Board affirmed the judge's recommendation to dismiss the unfair labor practice complaint in its entirety. Following the dismissal of the complaint, Fantasia initiated proceedings pursuant to EAJA to recover its attorney's fees of \$108,888.83 and expenses of \$2,574.46 incurred in defending against the complaint.

(Chairman Battista and Members Liebman and Walsh participated.)

Adm. Law Judge Benjamin Schlesinger issued his supplemental decision Nov. 6, 2002.

* * *

Classical Stone Works, Inc. d/b/a Gothic Stone Masonry (4-CA-31409; 339 NLRB No. 116) West Chester, PA July 31, 2003. Absent good cause being shown for the Respondent's failure to file a timely answer to the complaint, the Board granted the General Counsel's motion for default judgment insofar as the complaint alleges that the Respondent violated Section 8(a)(1) of the Act in certain respects, and violated Section 8(a)(3) by refusing to consider for hire or hire employee applicants Frederick Cosenza and Bernard Griggs because of their announced intention to engage in organizing activity. Citing *FES*, 331 NLRB 9 (2000), the Board found that the undisputed complaint allegations are sufficient to establish the alleged 8(a)(3) violations. Under the *FES* standards, however, it decided that the complaint allegations are insufficient for it to determine the appropriate remedy and remanded the case for a hearing before an administrative law judge on the limited issue of the number of openings that were available to the discriminatees. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Bricklayers Local 1; complaint alleged violation of Section 8(a) (1) and (3). General Counsel filed motion for summary judgment Jan. 10, 2003.

* * *

Heartshare Human Services of New York, Inc. (29-CA-24269, et al.; 339 NLRB No. 102) Woodside, NY July 29, 2003. Chairman Battista and Member Schaumber affirmed the administrative law judge's findings that the Respondent's executive vice president, Kathleen Meskell, unlawfully threatened Larry Evans with job loss if the employees selected a union to represent them; and that the Respondent's former program director, Carol Roberti, did not unlawfully interrogate Consuela Hodge and Evans about their union activities and did not unlawfully create the impression that the employees' union activities were under surveillance. Member Walsh, concurring in part and dissenting in part, would find that the Respondent violated Section 8(a)(1) in all respects. [\[HTML\]](#) [\[PDF\]](#)

Roberti's questioning of Hodge and Evans occurred a couple days after Hodge had voluntarily reported to management her encounter with a woman who only identified herself as "Shirley." Shirley had separately approached Hodge and Evans after work hours at a bus stop near the Hoffman facility. Shirley, a union representative, did not mention that she was from a union and asked Hodge and Evans questions regarding the Respondent's wages and working conditions. The following day, Shirley approached Hodge again at the bus stop and asked her questions similar to those she asked the previous day.

Chairman Battista and Member Schaumber wrote: "The Respondent was trying to find out about Shirley. The questions did not concern the employees' union sympathies or activities, but instead were limited to entirely neutral matters, such as Shirley's

physical description. *** In our view, this type of exchange does not amount to coercive interrogation. As the judge pointed out 'the mere fact that Roberti sought to satisfy her curiosity as to who was approaching employees on their way home, was normal behavior and was rather innocuous and noncoercive.'" Chairman Battista and Member Schaumber said the dissent's claim that the Respondent sought the limited information in order to take future disciplinary action against its employees is "wholly speculative." And, they disagreed with the dissent that employees would reasonably be inhibited from engaging in Section 7 activity because of Roberti's very narrow area of inquiry.

Member Walsh found the questioning by Roberti, the Respondent's highest-ranking official, in her office tended to create a coercive environment. He also noted that Evans was summoned over the loudspeaker to Roberti's office. Member Walsh believes that Roberti's detailed questions were not "harmless inquiries" as the majority suggests. He wrote: "The employees would have reasonably assumed that the Respondent's painstaking examination as to Shirley's physical characteristics was for the purpose of ensuring that it would be able to spot her should she ever come near the Respondent's facility again. An employee would reasonably be inhibited from associating with a person that the Respondent was taking pains to spot, out of fear of reprisal for associating with such a person." He also found that Roberti's questioning had a tendency to be coercive in light of the fact that the employees had not disclosed their union sympathies.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by CSEA Local 1000, AFSCME; complaint alleged violation of Section 8(a)(1). Hearing at New York on March 22, 2001. Adm. Law Judge Raymond P. Green issued his decision June 7, 2003.

* * *

Hope Electrical Corp. (17-CA-20758, 21062; 339 NLRB No. 113) St. Joseph, MO July 31, 2003. The Board affirmed the administrative law judge's dismissal of the complaint allegations that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to comply with the terms of a contract imposed by an interest arbitration panel. "If, as is the case here, the matter at issue does not involve a mandatory bargaining subject, the Board cannot find an 8(a)(5) violation," it held. See, e.g., *Chemical Workers Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 185 (1971). [\[HTML\]](#) [\[PDF\]](#)

The Respondent is an electrical contractor. In 1997, it signed a collective-bargaining agreement with Electrical Workers IBEW Local 545 that ran until May 31, 1999. The agreement had an interest-arbitration provision permitting either party to submit unilaterally a successor contract proposal to binding arbitration. In the spring of 1999, the Union invoked the interest-arbitration provision before the agreement expired. The arbitration panel imposed a successor collective-bargaining agreement, with a term from June 1, 1999, until May 31, 2002. The Respondent refused to comply with the new agreement and the Union filed a suit in the District Court for the Western District of Missouri to enforce it. On May 30, 2000, the court, in an unpublished order, enforced the interest award, finding that the Respondent was party to a valid agreement until 2002. The court did not address any issues under the NLRA.

The Board noted well-established precedent that interest arbitration is a nonmandatory subject of bargaining and, accordingly, repudiation of a collective-bargaining agreement imposed through an interest-arbitration clause in a preceding collective-bargaining agreement does not violate Section 8(a)(5) and (1). See *Tampa Sheet Metal Co.*, 288 NLRB 322, 325-326 (1988), and cases cited there. In *Tampa Sheet Metal*, the Board held "the remedy for such a repudiation lies not with the Board, but with the courts in a breach of contract proceeding." Id at 326. See also *Electrical Workers Local 113 (Collier Electric)*, 296 NLRB 1095, 1098-1099 (1989). Member Liebman acknowledged that *Tampa Sheet Metal*, supra, represents current Board law, and accordingly she concurred in the dismissal of the complaint.

(Members Liebman, Schaumber, and Acosta participated.)

Charges filed by Electrical Workers IBEW Local 545; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Overland Park, Aug. 16-17, 2001. Adm. Law Judge Gerald A. Wacknov issued his decision Dec. 5, 2001.

* * *

Jensen Enterprises, Inc. (28-CA-17401, 28-RC-5972; 339 NLRB No. 105) Las Vegas, NV July 31, 2003. The Board affirmed the administrative law judge's finding, among others, that the Respondent, through its agent and labor consultant Michael Penn, violated Section 8(a)(1) of the Act by informing employees that if the Union was voted in, wages would be "frozen" during negotiations and they "shouldn't expect to get any increases in wages or benefits until collective bargaining had concluded" and by promulgating and enforcing a rule against talking about the Union during working time, while allowing the discussion of other nonwork-related subjects. It ordered that the election held in Case 28-RC-5972 be set aside and that the Regional Director conduct a new election when the circumstances permit the free choice of a bargaining representative.

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The Union filed 43 objections to the election but prior to the hearing, withdrew a number of them with the approval of the Regional Director. Absent exceptions, the Board affirmed the judge's recommendation to overrule certain of the objections and to sustain certain of the objections. In adopting the judge's recommendation to sustain certain objections, the Board found it unnecessary to pass on whether the judge, in his consideration of the allegation contained in Objection 6 correctly found that the objection was coextensive with the complaint allegations concerning the Respondent's promulgation and enforcement of a discriminatory no-talking rule.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Carpenters; complaint alleged violation of Section 8(a) (1) and (3). Hearing at Las Vegas, March 12-15, 2002. Adm. Law Judge Gregory Z. Meyerson issued his decision May 31, 2002.

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Nations Rent, Inc. (25-CA-27257-1, et al.; 339 NLRB No. 101) Columbus, IN July 29, 2003. Chairman Battista and Member Walsh found, contrary to the administrative law judge, that the Respondent failed to adhere to certain terms of the settlement agreement approved by the Regional Director on November 14, 2001, and that the Respondent's noncompliance warranted setting the agreement aside and reinstating the February 28, 2002 consolidated complaint. In dissent, Member Schaumber noted the significant remedial measures the Respondent has taken to comply with the settlement agreement and the absence of any renewed unlawful practices, saying: "I am unprepared to set aside the settlement agreement under the circumstances presented." See *Deister Concentrator Co.*, 253 NLRB 358 (1980). [\[HTML\]](#) [\[PDF\]](#)

The consolidated complaint alleges various violations of Section 8(a)(1) and (3) of the Act, including that the Respondent maintained an unlawful no-solicitation/no-distribution rule in its employee handbook, and discharged Jerry Bickel on September 26, 2000, reinstated him on September 27, 2000, issued a written warning to him on April 26, 2001, and discharged him a second time on May 19, 2001 because of his activities for Operating Engineers Local 150 and because he engaged in an unfair labor practice strike.

The judge found no merit to the General Counsel's and Charging Party's contentions that the Respondent breached the settlement agreement by failing (1) to rescind its allegedly overly broad no-solicitation/no-distribution rule; (2) to notify Bickel in writing that any references to his disciplinary report or discharges had been removed from the Respondent's files and that the disciplinary report and discharges would not be used in any way; (3) to properly reinstate Bickel by treating him as a new hire; and (4) to properly make Bickel whole.

Chairman Battista and Member Walsh agreed with the judge's rejections of contentions (3) and (4) based on her finding that Bickel was properly reinstated to his former position and was properly made whole. Unlike the judge, the majority found merit in contentions (1) and (2), concluding that the Respondent continued to maintain the no-solicitation/no-distribution rule and failed to notify Bickel in writing of the expunction of his discipline. The majority remanded the proceeding to the judge to consider the merits of the presettlement unfair labor practice allegations and to issue a supplemental decision.

Member Schaumber found that the Respondent's failure to notify Bickel by separate written notification (when he was notified orally) of the expungement from his personnel file of the disciplinary reports and its failure to cross out the offending no-solicitation/no-distribution rule in its handbook, do not undermine the settlement agreement. He noted that almost contemporaneously with the distribution of the handbook to the two employees Respondent posted the Board's notice stating

the rule would no longer be given effect. Member Schaumber added "if the Respondent was to continue to use its handbook unaltered or without an attached notice expressly deleting the contested no-distribution/no-solicitation rule, I would set it aside."

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Operating Engineers Local 150; complaint alleged violation of Section 8(a)(1) and (3). Hearing at South Bend, June 3-4, 2002. Adm. Law Judge Margaret M. Kern issued her decision Aug. 12, 2002.

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Ogden Ground Services, Inc. (36-RC-6169; 339 NLRB No. 107) Portland, OR July 29, 2003. The Board, having been advised by the National Mediation Board (NMB) that the Employer is a carrier subject to the Railway Labor Act (RLA), dismissed the representation petition filed by Machinists Lodge 24 seeking to represent a certain group of the Employer's employees working at the Portland International Airport in Portland, Oregon. [\[HTML\]](#) [\[PDF\]](#)

The Employer provides aviation support services for Alaska Airlines, its only customer at the Portland Airport. In February 2003, the Board requested that the NMB study the record and determine the applicability of the RLA to the Employer. The NMB concluded that the facts in this case are distinguishable from previous NMB cases involving Ogden operations where the NMB had determined that those operations were not subject to the RLA. See, e.g., *Ogden Aviation Services*, 23 NMB 98 (1996); *Ogden Aviation Services*, 20 NMB 181 (1993). See also *Ogden Aviation Services*, 320 NLRB 1140 (1996).

(Members Schaumber, Walsh, and Acosta participated.)

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Phillips Petroleum Co. (19-CA-28114; 339 NLRB No. 111) Ferndale, WA July 31, 2003. The administrative law judge found, with Board approval, that the Respondent violated Section 8(a)(1) of the Act by discharging Brandon Ingram for attempting to obtain family and medical leave. The Board found it unnecessary to pass on the judge's finding that Ingram's activities amounted to an attempt to enforce a provision of the collective-bargaining agreement, saying Ingram's conduct constituted protected concerted activity even apart from the issue of whether it concerned any contractual provision. It wrote: [\[HTML\]](#) [\[PDF\]](#)

"Ingram engaged in protected concerted activity to remedy a perceived inadequacy in working conditions, i.e., the inability of employees to use sick leave for family medical emergencies. Although Ingram's efforts to secure sick leave originated because of his need to care for his wife and children, the record clearly establishes that Ingram's efforts embraced the larger purpose of obtaining this benefit for all of his fellow employees."

Applying *Wright Line*, 251 NLRB 1083 (1980), the Board decided that Ingram's protected conduct was a motivating factor in the Respondent's decision to discharge him and that the Respondent failed to establish that it would have discharged Ingram in the absence of his protected conduct. In defense, the Respondent claimed that it discharged Ingram because of concerns about his ability to follow safety instructions.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Paperworkers Local 8-590; complaint alleged violation of Section 8(a)(1). Hearing at Bellingham, Oct. 22-23, 2002. Adm. Law Judge Jay R. Pollack issued his decision Dec. 11, 2002.

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Pro-Spec Painting, Inc. (4-CA-31034, 31050; 339 NLRB No. 115) Vineland, NJ July 31, 2003. Affirming the administrative law judge's decision, the Board concluded that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging Tim Hernberger and Tom Henze because of their activities for Painters District Council 711; and that the

Respondent did not violate Section 8(a)(3) and (1) by laying off Philip Hann. The judge found that Hann voluntarily terminated his relationship with the Respondent. [\[HTML\]](#) [\[PDF\]](#)

No exceptions were filed to the judge's findings that the Respondent violated Section 8(a)(1) when Respondent's president, Ron Yarbrough, told Hann that Hernberger was no longer working for the Respondent because Hernberger had joined the Union, and when Yarbrough threatened to terminate Hann if he told Hernberger that Hann was painting Yarbrough's house.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Painters District Council 711; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on Aug. 4, 2002. Adm. Law Judge Robert A. Giannasi issued his decision Oct. 1, 2002.

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Shaw's Supermarkets, Inc. (1-CA-38399; 339 NLRB No. 108) Methuen, MA July 29, 2003. Members Liebman and Acosta adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) and (5) of the Act by dilatorily providing requested information to Food and Commercial Workers Local 791 that was relevant and necessary to its role as the exclusive bargaining representative of the unit employees. Chairman Battista dissented. [\[HTML\]](#) [\[PDF\]](#)

The majority agreed with the judge that the allegations that the Respondent refused to furnish the requested information should not be deferred to the grievance-arbitration provisions of the collective-bargaining agreement. Members Liebman and Acosta said that the Board has a longstanding policy of nondeferral to arbitration in information request cases. *General Dynamics Corp.*, 270 NLRB 829 (1984). The Respondent, citing *Malrite of Wisconsin*, 198 NLRB 241 (1972), contended that the Board should defer here because the Board's processes are being used to "enforce" an arbitration award. Members Liebman and Acosta disagreed, saying that unlike the union in *Malrite*, the Union here is not seeking from the Board the same relief it already obtained from an arbitrator but is seeking that the Respondent satisfy its independent obligation to furnish information concerning its implementation of an arbitrator's award.

Chairman Battista would defer this matter to the same arbitration process through which the parties agreed to resolve the merits of the underlying grievance. He wrote: ". . . I find that entangling the Board in the dispute through an unfair labor practice proceeding, without first seeking the assistance of the arbitrator, adds (rather than eliminates) inefficiency. Although seeking the involvement of the arbitrator would not guarantee an immediate resolution of the information request in all cases, e.g., when the arbitrator declines to consider the matter, I believe that this approach would in many cases save the parties substantial time in obtaining a determination of that issue."

(Chairman Battista and Members Liebman and Acosta participated.)

Charge filed by Food & Commercial Workers Local 791; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston on April 24, 2001. Adm. Law Judge Martin J. Linsky issued his decision Aug. 17, 2001.

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Superior Protection, Inc. (16-CA-21399, 21495, 16-RC-10361; 339 NLRB No. 118) Houston, TX July 31, 2003. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(1), (3), and (4) of the Act by imposing a 3-day suspension and 90-day probationary period on and then discharging employee Kelvin Trotter, and by threatening employees who engaged in union activity or who participated in NLRB proceedings with discharge. It modified the judge's recommended Order to include a remedial provision for the Respondent's Section 8(a)(4) violation but declined to include the judge's recommended remedial provision requiring the Respondent to reimburse Trotter for any extra Federal or State income tax that would result from the lump sum payment of any backpay award. [\[HTML\]](#) [\[PDF\]](#)

Trotter's ballot was determinative of the election results in Case 16- RC-10361. The Respondent challenged his ballot because he was a discharged employee. The Board, having adopted the judge's finding that Trotter was discriminatorily discharged, held that he was eligible to vote. Accordingly, the Board directed the Regional Director to open and count Trotter's ballot and

to prepare and serve on the parties a revised tally of ballots and issue the appropriate certification.

The Board denied the Respondent's request for oral argument and its motion to reopen the case and receive further evidence. Member Acosta joined his colleagues in denying the Respondent's request to introduce further evidence from the preelection case rather than just the portion of the transcript containing the testimony of Trotter, whose testimony in the present proceeding the Respondent seeks to discredit. He found that the Respondent failed to explain how the admission is appropriate or necessary.

(Members Schaumber, Walsh, and Acosta participated.)

Charges filed by United Government Security Officers Local 229; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Houston, March 11 and 12, 2002. Adm. Law Judge Robert A. Pulcini issued his decision Aug. 28, 2002.

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Teamsters Local 662 (18-CB-4111-1; 339 NLRB No. 109) Eau Claire, MN July 31, 2003. The Board, on the recommendation of the administrative law judge, found that the Respondent Union, by failing and refusing to sign a written collective-bargaining contract embodying the final and binding agreement reached with Charging Party W.S. Darley & Co. on October 4, 2000, as the representative of all employees in the appropriate bargaining unit, violated Section 8(b)(3) of the Act. [\[HTML\]](#) [\[PDF\]](#)

(Members Schaumber, Walsh, and Acosta participated.)

Charge filed by W.S. Darley & Co.; complaint alleged violation of Section 8(b)(3) and 8(d). Hearing at Minneapolis on March 6, 2002. Adm. Law Judge William J. Pannier III issued his decision Sept. 23, 2002.

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Trane, an Operating Unit of American Standard Companies (14-RC-12421; 339 NLRB No. 106) Fenton, MO July 29, 2003. The Board found that the Regional Director erred in finding that Employer failed to rebut the single-facility presumption and that the petitioned-for single facility unit of heating, ventilation and air-conditioning (HVAC) technicians working out of the Employer's Fenton, MO facility is appropriate. It decided that the unit must include the HVAC technicians working from the Employer's Cape Girardeau, MO facility because the employees possess identical skills, perform identical functions, and labor under identical working conditions; and all supervisory functions for both Fenton and Cape Girardeau are centralized at the Fenton office. [\[HTML\]](#) [\[PDF\]](#)

The Employer manufactures, installs, and services commercial and residential HVAC equipment throughout the U.S. and abroad. The Employer's operations are divided into various District Sales Offices (DSOs). The St. Louis DSO includes the Employer's facilities in Fenton, MO (Fenton), Cape Girardeau, MO (Cape); and Bridgeton, MO (Bridgeton). The petitioning union is Plumbers Local 562.

The Board found that the Regional Director placed too much emphasis on the geographic distance between the Fenton and Cape locations and the Employer's failure to present specific evidence of employee interchange. It wrote: "First, while we would generally consider a geographic distance of 108 miles between facilities significant, here, its significance is reduced by the fact that the employees are dispatched from their homes, only occasionally go into their respective offices, and the two areas are only loosely defined by fluid lines of demarcation. Second, the Employer's evidence of regular interchange between the two sites, while general in nature, stands unchallenged in this case." The Regional Director's reliance on the lack of historical bargaining on a multilocation basis to find the petitioned-for unit appropriate is misplaced, the Board said, noting that the Employer has no bargaining history at all.

(Chairman Battista and Members Walsh and Acosta participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Arvinmeritor, Inc. (Auto Workers Local 1037) Newark, OH July 29, 2003. 8-CA-33322-1; JD-77-03, Judge David L. Evans.

Tradesmen International, Inc. (Sheet Metal Workers Local 15) Orlando, FL July 29, 2003. 12-CA-22630; JD(ATL)-49-03, Judge William N. Cates.

Wal-Mart Stores, Inc. (Food & Commercial Workers Local 7) Denver, CO July 22, 2003. 27-CA-18206-2, et. al.; JD(SF)-47-03, Judge Clifford H. Anderson.

* * *

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.)

Blue Diamond Fiber Optics Network, Inc. (Communications Workers Local 1109) (2-CA-34938; 339 NLRB No. 117) Patterson, NY July 31, 2003.