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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August 15, 2003 W-2908

CASES SUMMARIZED

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weekly note

Canal Carting, Inc. and Canal Sanitation, Inc., A Single Employer (29-RC-10043; 339 NLRB No. 121) Brooklyn, NY Aug. 8, 2003. The Board granted the Employer's request for review of the Regional Director's Decision and Direction of Election and reversed the Regional Director's finding that the bargaining unit represented by the League of International Federated Employees, Local 890 (Intervenor) is inappropriate. It found that the collective-bargaining agreement between the Employer and the Intervenor bars the Petitioner's (Teamsters Local 813) petition, and dismissed the petition. [HTML] [PDF]

Canal Carting, Inc. (Carting) and Canal Sanitation, Inc. (Sanitation) are engaged in waste removal and recycling. They operate out of a facility in Brooklyn, NY. Carting performs services only in Manhattan. Sanitation conducts business primarily in Queens, Brooklyn, the Bronx, Staten Island, and New Jersey. Carting and Sanitation drivers do not interchange routes, and Carting and Sanitation do not interchange trucks or other equipment. The Employer's mechanics and truck washer work on vehicles owned by both Carting and Sanitation. The parties do not dispute that Carting and Sanitation are a single employer under the Act.

The Petitioner has represented drivers and helpers at Carting since the 1970s. Although the most recent agreement between

Carting and the Petitioner expired on November 30, 2002, Carting continues to pay wages and fund contributions pursuant to the expired contract. On November 1, 2001, the Intervenor signed a collective-bargaining agreement with Sanitation that expires on October 19, 2004, which covers a unit of drivers, helpers, mechanics, welders, utility, and laborers. The Petitioner sought to represent a unit that encompasses employees at both Carting and Sanitation.

(Members Liebman, Schaumber, and Acosta participated.)

* * *

International Business Machines Corp. (3-CA-22062; 339 NLRB No. 120) Fishkill, NY Aug. 8, 2003. Chairman Battista and Member Schaumber, with Member Walsh dissenting, denied the Union's request for review of the General Counsel's denial of its request, at the compliance stage, that the Respondent be required to post the Board's remedial notice on its electronic (e-mail) system and intranet, in addition to its traditional paper bulletin boards. In denying the Union's request, the majority held that the appropriate time for the Union to request electronic posting of the remedial notice on the Respondent's e-mail system and intranet was before the administrative law judge and/or the Board in the underlying proceeding. See Section 102.53(d) of the Board's Rules and Regulations. [HTML] [PDF]

In the prior proceeding, the Board adopted the judge's findings that the Respondent violated Section 8(a)(1) of the Act by maintaining a rule precluding employees from displaying prounion signs on their vehicles in company parking lots, and telling employees that doing so violated company policy. 333 NLRB 215 (2001). The U.S. Court of Appeals for the Second Circuit enforced the Board's order on March 22, 2002.

The Regional Director, by letter dated May 7, 2002, denied the Union's request that the Respondent be required to communicate the notice to employees via its e-mail system and intranet saying she lacked authority to require such a "special" remedy because: (1) the Board's decision and order contained the standard notice-posting provisions; (2) there was no requirement in either the Board's decision or the court's decision enforcing the Board's order that the notice be electronically posted; and (3) the Union had the opportunity to urge electronic posting of the notice before the judge and the Board, but failed to do so. The General Counsel denied the Union's subsequent appeal substantially for the reasons set forth in the Regional Director's letter.

The Union argued that posting the Board's notice on the bulletin boards would not fully comply with the Board's order because the Company's bulletin boards are not in "conspicuous places," and that, by the Respondent's own estimate, 30 percent of its employees work off-site at least 50 percent of the time.

Member Walsh would grant the Union's request for review and order Respondent to post the Board's notice via e-mail and on its intranet, noting that IBM is essentially a paperless company that "customarily" posts notices to its employees on its email system and intranet. He agreed with the Union that electronic posting is required because paper bulletin board posting would be inadequate; that approximately 30 percent of the employees work away from the facility 50 percent of the time; and there are relatively few paper bulletin boards in the affected IBM facilities (one in the cafeteria, one in the building basement, and one in the main lobby at one of the sites). Member Walsh wrote: "The Regional Director cites no Board decision holding that it is inappropriate to require a respondent to post the Board's notice electronically . . . requiring IBM to post the Board's notice on its e-mail and intranet would not be contrary to, or involve a change in, Board law, but instead is mandated by the plain language of the Board's standard notice-posting provision."

(Chairman Battista and Members Schaumber and Walsh participated.)

* * *

Jackson County Commission on Aging (9-CA-37292; 339 NLRB No. 119) Ripley, WV Aug. 5, 2003. The Board held, in agreement with the administrative law judge, that the Respondent violated Section 8(a)(3) and (1) of the Act by failing to reinstate economic striker James Anderson on December 27, 1999, and thereafter. [HTML] [PDF]

Chairman Battista found it unnecessary to pass on the judge's finding that the Union's December 23, 1999 letter to the

Respondent constituted a valid unconditional offer to return but found that the General Counsel established a prima facie case by showing that Anderson made a valid unconditional offer to return by arriving at the Respondent's facility ready to work on December 27. The Respondent did not meet its burden of showing that its failure to reinstate Anderson was motivated by legitimate objectives and noted that Respondent's reliance on the fact that, in 1998, all employees returned from a strike on the day following their acceptance of a contract proposal is¾without more¾inadequate to establish a legitimate business justification for the failure to reinstate Anderson.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Health Care and Social Service Union District 1199 SEIU; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Ripley on April 3, 2002. Adm. Law Judge Richard S. Scully issued his decision Sept. 19, 2002.

* * *

Pratt Institute (29-RC-10016; 339 NLRB No. 126) New York, NY Aug. 8, 2003. Chairman Battista and Member Acosta granted the Employer's request for a stay of the hearing in this case pending the Board's decision in *Brown University,* Case 1-RC-10016, and *Trustees of Columbia University,* Case 2-RC-22358, currently before the Board. Member Walsh dissented from his colleagues' Order. [HTML] [PDF]

The majority contended that if, in the pending cases, the Board holds that graduate assistants are not entitled to representation through NLRB processes, a hearing in this matter will be unnecessary and the Board will have saved money and time, both for the U.S. taxpayer and for the private parties. They found that even if the decisions in *Brown and Columbia* uphold extant law or hold only that the graduate assistants in those cases are not employees entitled to representation through NLRB processes, those decisions would at least give guidance to the parties who could therefore litigate with greater focus and greater expedition.

In his dissenting opinion, Member Walsh asserted that the Employer cited no precedent supporting its unusual request and he knows of none. He said that although the Board is reconsidering *New York University,* 332 NLRB 1205 (2000) (*NYU*), in the pending cases, *NYU* is still the law. He wrote: "While one may speculate whether, when, and how that law may ultimately be changed, such speculation provides no basis whatsoever for delaying the resolution of the representation question raised by the filing of the instant petition." Member Walsh asserted that the Regional Director's decision to proceed to a hearing is in accord with Agency policy and there is no dispute that the petition raised a question concerning representation and that a hearing must be held.

(Chairman Battista and Members Walsh and Acosta participated.)

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

United International Investigative Services, Inc. (Security Officers and Guards) Anaheim, CA August 1, 2003. 21-CA-35019; JD(SF)-46-03, Judge John J. McCarrick.

Contempora Fabrics, Inc. (Food & Commercial Workers Local 204) Lumberton, NC August 4, 2003. 11-CA-19542, et al., 11-RC-6488; JD(ATL)-52-03, Judge Margaret G. Brakebusch.

HPM Corp. and Sara J. Daneman, Trustee in Bankruptcy for HPM Corp. (Machinists District Lodge 54) Mt. Gilead, OH August 5, 2003. 8-CA-32647; JD-78-03, Judge William G. Kocol.

Lafarge North America, Inc. (Operating Engineers Local 150 and Steelworkers Local 1010) East Chicago, IN August 6, 2003. 13-CA-39980, 40178; JD-79-03, Judge Earl E. Shamwell Jr.

Endicott Interconnect Technologies, Inc. (Alliance@IBM/Communications Workers Local 1701) Endicott, NY August 7,

2003. 3-CA-24105; JD(NY)-44-03, Judge Joel P. Biblowitz.

Northeast Beverage Corp. and B. Vetrano Distributors, Inc., et al. (Teamsters Local 1035) Bethel, CT August 7, 2003. 34-CA-10139, 10156; JD(NY)-43-03, Judge Eleanor MacDonald.

TKC, a Joint Venture (Operating Engineers Local 77) Oxon Hill, MD August 7, 2003. 5-CA-30504, 30554; JD-80-03, Judge Richard A. Scully.