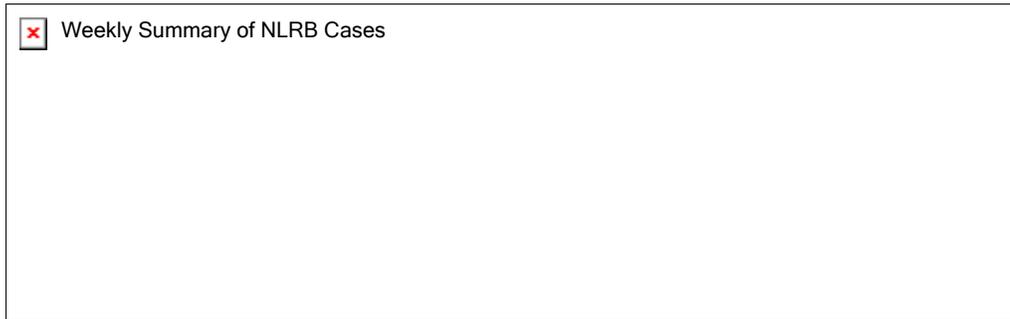


ABOUT THE WEEKLY SUMMARY

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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September 26, 2003

W-2914

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

Essex County Arc	Plattsburgh, PA
LB & B Associates, Inc.	Fallon, NV
Labinal, Inc.	Pryor Creek, OK
Norris Sucker Rods	Tulsa, OK
Swardson Painting Co.	Clarksdale, MO
Tom Cat Development Corp.	Patchogue, NY
Wal-Mart Stores, Inc.	Grand Rapids, MN

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Essex County Arc (3-CA-23939; 340 NLRB No. 26) Plattsburgh, PA Sept. 15, 2003. The Board affirmed the administrative law judge's finding and dismissed the complaint allegations that the Respondent violated Section 8(a)(1) of the Act by: (a) explicitly and implicitly threatening to reduce the employees' benefits if they selected the Union as their collective-bargaining representative; (b) informing its employees that bargaining would start from scratch if the Union was selected as their representative; (c) interrogating its employees about their union activities; (d) directing its employees to refrain from signing union authorization cards; and (e) soliciting grievances from employees and impliedly promising to redress them in order to dissuade employees from supporting the Union. [\[HTML\]](#) [\[PDF\]](#)

The unlawful activity was alleged to have taken place at two monthly meetings conducted by the Respondent. The judge credited the testimony of Mary Savage, Respondent's regional director whom he found to be a credible witness. The judge

noted that his observation of Savage convinced him that it would be out of character for her to make the unlawful statements attributed to her.

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Civil Service Employees Association (AFSCME); complaint alleged violation of Section 8(a)(1). Hearing at Plattsburgh on May 28, 2003. Adm. Law Judge Joel P. Biblowitz issued his decision July 17, 2003.

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Jeffrey A. Swardson, an Individual d/b/a Swardson Painting Co. (17-CA-20795, 17-RC-11892; 340 NLRB No. 24) Clarksdale, MO Sept. 15, 2003. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a) (1) of the Act by threatening to close its shop and to discharge employees who engaged in union activity and by instructing a union representative to leave its jobsite. Chairman Battista and Member Schaumber found, contrary to the judge, that the Respondent did not, in fact, discharge employees Tommie A. Maddox and Charles E. Simpson and therefore, did not violate Section 8(a) (3) with respect to them. Member Walsh disagreed with his colleagues. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber noted that Maddox and Simpson, along with employee Michael Shaw, walked off the job to protest the fact that they were earning lower wages than a newly hired employee. After a series of telephone conversations with the Respondent's owner, Shaw was offered and accepted a \$1 hourly raise. Maddox and Simpson were never offered a raise and after this incident, neither attempted to return to work for the Respondent. Chairman Battista and Member Schaumber said, in finding that Maddox and Simpson were not discharged, that their choices were to return to work without a raise, continue their work stoppage, or quit. They remanded Case 17-RC-11892 to the Regional Director to determine the voter eligibility of Maddox and Simpson.

Dissenting in part, Member Walsh wrote that the Respondent's harsh display of hostility toward Maddox and Simpson in the face of their work stoppage, created a climate of ambiguity and confusion which caused Maddox and Simpson to believe that they had been discharged or that their employment was at least questionable because of their strike activity. He agreed with the judge that the Respondent discharged Maddox and Simpson because of their protected concerted walkout in protest of their wages and their support for the Union.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Painters District Council 3; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Overland Park, KS and St. Joseph, MO, Nov. 28 and 29, 2000. Adm. Law Judge Mary Miller Cracraft issued her decision Feb. 16, 2001.

* * *

Labinal, Inc. (17-CA-22024; 340 NLRB No. 25) Pryor Creek, OK Sept. 16, 2003. The Board upheld the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by maintaining a rule prohibiting its employees from discussing salaries and wages with each other; interrogating them concerning their discussion of salaries and wages with each other; suspending Nancy Weaver on July 25, 2002; and discharging Weaver on or about July 26, 2002. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Nancy Weaver, an Individual; complaint alleged violation of Section 8(a)(1). Hearing at Tulsa on April 10, 2003. Adm. Law Judge John H. West issued his decision June 20, 2003.

* * *

LB & B Associates, Inc. (32-CA-19334; 340 NLRB No. 29) Fallon, NV Sept. 16, 2003. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employee Mark Becker in retaliation for filing a grievance. The judge also found that the Respondent refused to bargain over the decision to discharge

Becker and its effects, in violation of Section 8(a)(5) and (1). The Board found it unnecessary to reach the merits of the 8(a)(5) allegation. It said the judge's recommended broad order was "overbroad" for the 8(a)(5) violation he found and that a bargaining remedy tailored to his specific finding is unnecessary in light of the 8(a)(3) reinstatement and make-whole remedy it adopted. Given the finding of unlawful discrimination, the Respondent's decision to discharge Becker was itself unlawful, the Board reasoned. Under these circumstances, it dismissed the 8(a)(5) allegation. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Machinists District Lodge 190, Local Lodge 801; complaint alleged violation of Section 8(a)(1), (3) and (5). Hearing at Reno on July 30, 2002. Adm. Law Judge John J. McCarrick issued his decision Nov. 13, 2002.

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Norris Sucker Rods (17-CA-21436; 340 NLRB No. 28) Tulsa, OK Sept. 15, 2003. In agreement with the administrative law judge, the Board concluded that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide information relevant to the processing of grievances or the administration of the collective-bargaining agreement requested by the Steelworkers on October 29, 2001. [\[HTML\]](#) [\[PDF\]](#)

The Board modified the judge's recommended order and directed the Respondent to provide the Union a list of unit employees who had submitted absence excuse slips in the 6 months preceding the Union's request. The Board also required the Respondent to produce the absence excuse slips with the names of treating physicians and medical information directly stating diagnosis, treatment, or medication given redacted.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Zachary Trosky, an Individual; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Tulsa on May 21, 2002. Adm. Law Judge Albert A. Metz issued his decision Oct. 18, 2002.

* * *

Tom Cat Development Corp. (2-CA-34267, 34600; 340 NLRB No. 27) Patchogue, NY Sept. 15, 2003. The Board granted the General Counsel's motion for summary judgment and ordered the Respondent to make whole Alberto Bota in the amount of \$6000 plus interest. [\[HTML\]](#) [\[PDF\]](#)

On March 27, 2003, the Regional Director approved a Stipulation under which the Respondent agreed to make Bota whole by paying him \$6000 in three equal installments on April 2, August 14, and December 12, 2003. The stipulation also provided that in the event the Respondent did not make the scheduled payments, the entire liquidated amount still unpaid would be immediately due and payable in one lump sum. The Respondent failed to remit the agreed-upon backpay payment due Bota on April 2.

In its earlier decision reported at 338 NLRB No. 89 (2002), the Board directed the Respondent to make whole Bota and Philip Peyton for loss of earnings and other benefits resulting from their discharges in violation of Section 8(a)(1) and (3) of the Act. Prior to approval of the stipulation, the Region determined that Peyton was not owed any backpay as his interim earnings exceeded what he would have earned had he remained employed by the Respondent throughout the backpay period.

(Chairman Battista and Members Liebman and Walsh participated.)

General Counsel filed motion for summary judgment July 25, 2003.

* * *

Wal-Mart Stores, Inc. (18-CA-14757, 15017; 340 NLRB No. 31) Grand Rapids, MN Sept. 17, 2003. The Respondent filed exceptions to the administrative law judge's findings that the Respondent (1) threatened employee Deborah Hager in violation

of Section 8(a)(1) of the Act, (2) changed the work schedule of Sherry Nelson in violation of Section 8(a)(3) and (1), and (3) instructed its 22 department managers that they could not participate in union activities, that it would be unlawful for them to do so, and that they were to report union activity to management, in violation of Section 8(a)(1). The Board found that the Respondent unlawfully threatened Hager, changed the schedule of Nelson in violation of Section 8(a)(3) and (1), and that the Respondent's instructions to four department managers who were not statutory supervisors violated Section 8(a)(1). [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista, dissenting in part, would dismiss the 8(a)(3) allegation regarding Nelson. Contrary to the judge, he found that the General Counsel failed to establish that the Respondent knew or even suspected that Nelson was a union supporter.

The General Counsel and the Charging Party did not file exceptions. The Respondent did not except to the judge's findings that it violated Section 8(a) (1) by implementing and maintaining a broad rule prohibiting employees from discussing their wages and benefits among themselves and by telling employees that they would be terminated if they did so.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by the Paperworkers International; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Grand Rapids on April 26-27, 1999 and in Minneapolis on May 24, 1999. Adm. Law Judge C. Richard Miserendino issued his decision Dec. 14, 1999.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

J & S Electrical Contractors, Inc. (Electrical Workers [IBEW] Local 269) Philadelphia, PA September 16, 2003. 4-CA-21461; JD-101-03, Judge Eric M. Fine.

Ramada Plaza Hotel (Hotel & Allied Services [SEIU] Local 758) Corona, NY September 17, 2003. 29-CA-25181, 25501; JD (NY)-49-03, Judge Raymond P. Green.

Interstate Brands Corp. (Teamsters Local 135) Anderson, IN September 17, 2003. 25-CA-28592; JD-102-03, Judge Mark D. Rubin.

Staten Island Cable LLC d/b/a Time Warner Cable of New York City and Electrical Workers [IBEW] Local 3 (D.M. & M. Cable Services, Inc. d/b/a Advantage Cable) Staten Island, NY September 17, 2003. 29-CE-118; JD(NY)-48-03, Judge Eleanor MacDonald.

Southside Hospital (New York's Health Human Service Union 1199 [SEIU]) Brooklyn, NY September 19, 2003. 29-CA-25210; JD(NY)-50-03, Judge Jesse Kleiman.

* * *

TEST OF CERTIFICATION

(In the following cases, the Board granted the General Counsel's motion for summary judgment on the ground that the Respondent has not raised any representation issues that are litigable in the unfair labor practice proceeding.)

United Steel Service, Inc., d/b/a UNISERV (Auto Workers [UAW] Region 2) (8- CA-32615; 340 NLRB No. 30) Brookfield, OH September 15, 2003.

All American Service and Supplies, Inc. (Operating Engineers Local 12) (21- CA-35833; 340 NLRB No. 37) Corona, CA

September 18, 2003.

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WITHDRAWAL OF ANSWER

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

Better Business Bureau of Siouxland (Workers Have Rights Too) (18-CA-16665; 340 NLRB No. 23) Sioux City, IA
September 12, 2003.