

## 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.



[Index of Back Issues Online](#)

October 17, 2003

W-2917

**CASES SUMMARIZED**

SUMMARIES CONTAIN LINKS TO FULL TEXT

<a href="#">American Postal Workers Local 64</a>	Encino, CA
<a href="#">CTS, Inc.</a>	Wales, WI
<a href="#">Harvest Select Farms, LLC</a>	Uniontown, AL
<a href="#">Tri-Tech Services, Inc.</a>	Selma, AL

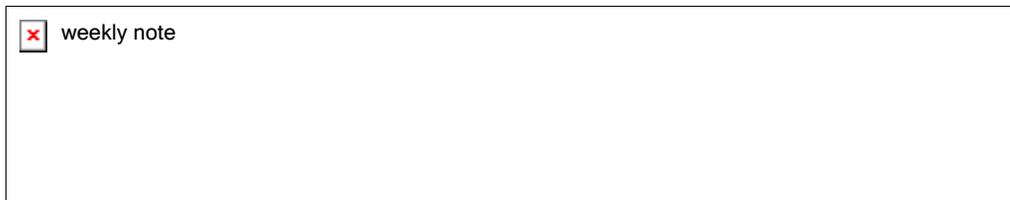
**OTHER CONTENTS**

[Decision of Administrative Law Judge](#)

Press Releases:    [\(R-2506\)](#) David Parker Appointed NLRB Deputy Executive Secretary  
                           [\(R-2507\)](#) NLRB Reports on Case Activity for FY 2003  
                           [\(R-2508\)](#) Carol Shore is Named Deputy Regional Attorney in NLRB's Cincinnati Office

Operations-Management Memorandum ([OM 04-02](#)): Interregional Assistance Program

**Correction:** In the October 10, 2003 issue (W-2916), substitute March 6, 2003 for June 21, 2002 as the hearing date of CSX Hotels, Inc. d/b/a The Greenbrier, 340 NLRB No. 92, on page 8.



*Alabama Catfish, Inc. d/b/a Harvest Select Farms, LLC* (10-CA-34246; 340 NLRB No. 100) Uniontown, AL Sept. 30, 2003. The Board, having found that the administrative law judge's bench decision does not adequately set forth his reasons for

crediting certain witnesses over others, remanded this proceeding to the judge to reconsider his credibility determinations and to issue a supplemental decision fully explaining the basis for crediting or discrediting the testimony of the respective witnesses. It also ordered the judge to further consider the issue of whether the Respondent violated Section 8(a)(1), (3), and (4) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The Board wrote: "Of particular concern, the judge's decision does not indicate whether he considered certain undisputed facts that arguably are inconsistent with his credibility determinations. As a result, we are unable to resolve the Respondent's exceptions to the judge's finding that it unlawfully refused to rehire [Charging Party Pamela] Witherspoon."

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Pamela Witherspoon, an individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Uniontown on May 9, 2003. Adm. Law Judge Lawrence W. Cullen issued his bench decision June 11, 2003.

\* \* \*

*American Postal Workers Local 64* (21-CB-13333(P); 340 NLRB No. 98) Encino, CA Oct. 10, 2003. Members Liebman and Walsh denied the Union's petition to revoke two subpoenas which were served by the Regional Director on union officials Yolanda Elder and Arthur Clark in connection with the investigation of the unfair labor practice charge filed by Teresa Taft. In denying the Union's petition, the Board wrote: "Section 11(1) of the Act specifically authorizes the issuance of investigatory subpoenas seeking testimony, and the Board's authority to issue such subpoenas is well established." *Offshore Mariners United*, 338 NLRB No. 88 (2002); *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005, 1007-1008 (9th Cir. 1996). Chairman Battista dissented. [\[HTML\]](#) [\[PDF\]](#)

In support of its petition, the Union asserted, among others, that it had already cooperated with the Region by providing two written statements setting forth its position, as well as numerous documents and was unaware of any law that required a party to produce "the Charged Party for the purpose of providing an affidavit to the Region during the investigation of an unfair labor practice charge against that party."

Chairman Battista would grant the Union's petition to revoke on the grounds that the Regional Director has failed to show that the subpoenaed testimony is relevant to the investigation, and that the subpoenas do not describe with particularity the evidence being sought. He disagreed with his colleagues that it is sufficient that the subpoena simply identify the name and number of the case under investigation. In his view, the mere naming of the case does not, standing alone, "describe with sufficient particularity the evidence whose production is required." He said "it makes no sense to permit a subpoena to be vague and indefinite and to have the gaps filled in only after motions and countermotions."

(Chairman Battista and Members Liebman and Walsh participated.)

\* \* \*

*CTS, Inc.* (30-CA-16057-1; 340 NLRB No. 99) Wales, WI Oct. 9, 2003. Chairman Battista and Member Schaumber affirmed the administrative law judge's dismissal of the complaint allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to adhere to the terms of the June 1, 2002-May 31, 2005 collective-bargaining agreement (the 2002 agreement) between the Associated General Contractors of Wisconsin (AGC) and the Union. The majority agreed with the judge's conclusion that the Respondent was not bound by the 2002 agreement and, based on the totality of the Union's conduct, that the Union consented or acquiesced in the Respondent's effort to abandon multiemployer bargaining. [\[HTML\]](#) [\[PDF\]](#)

Dissenting, Member Walsh concluded that the Respondent violated the Act by failing and refusing to abide by the 2002 multiemployer agreement. He found that under the standards set out in *Retail Associates, Inc.*, 120 NLRB 388 (1958), the Union's letter of February 20, 2002 does not constitute or reasonably communicate a withdrawal by the Union from multiemployer bargaining and that the Union has not unequivocally disclaimed representation of the Respondent's employees. *Citing Standard Roofing Co.*, 290 NLRB 193 (1988), Member Walsh found that the Union's post-February 20 conduct cannot be considered individual contract negotiations with the Respondent.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Bricklayers District Council of Wisconsin; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Milwaukee on Nov. 4, 2002. Adm. Law Judge Benjamin Schlesinger issued his decision Feb. 11, 2003.

\* \* \*

*Tri-Tech Services, Inc.* (15-CA-16177-1, et al.; 340 NLRB No. 97) Selma, AL Sept. 30, 2003. The Board agreed with the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing the layoff of 24 employees without providing the Steelworkers an opportunity to bargain about it. The Board found it unnecessary to pass on the judge's finding that the Respondent violated Section 8(a)(3) by using the layoff to retaliate against employees' selection of the Union. [\[HTML\]](#) [\[PDF\]](#)

When Delta Airlines informed Respondent that there would be no more orders for rotary container transporters, the Respondent shut down the line that manufactured the equipment and laid off 24 employees represented by the Union. The Respondent argued that the layoff was not a unilateral change over which it was required to bargain because the layoff was consistent with its past practice of employee layoffs and that the Union waived its right to bargain about the layoff by not making a demand for bargaining when it learned that the layoff had occurred. The Board agreed with the judge that the Respondent's unilateral implementation of the layoff was presented to the Union as a *fait accompli*, making any demand for bargaining futile. See, e.g., *Pontiac Osteopathic Hospital*, 336 NLRB 1021, 1023-1024 (2001).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Steelworkers; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Selma, Dec. 12, 13, and 14, 2001. Adm. Law Judge Jane Vandeventer issued her decision Aug. 8, 2002.

\* \* \*

### DECISION OF ADMINISTRATIVE LAW JUDGE

*Vaughn Industries* (Electrical Workers [IBEW] Local 8 and an Individual) Cary, OH October 7, 2003. 8-CA-32627, 32637; JD-109-03, Judge C. Richard Miserendino.