

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Allen's Electric Co., Inc. (16-RC-10472; 340 NLRB No. 119) Travis, et al., TX Nov. 19, 2003. Members Liebman and Walsh certified Electrical Workers IBEW Local 520 as the exclusive representative of all electrical workers employed by Allen's Electric Co. in various counties in the State of Texas. The results for the election held January 7, 2003 shows 13 for and 7 against the Union. The majority affirmed the hearing officer's recommendation and overruled the Employer's Objection to the Union's promises and payments to voters to reimburse them for wages lost while they voted. The Employer failed to prove that the Union's conduct had a reasonable tendency to influence voters' free choice in the election, the majority held. [\[HTML\]](#) [\[PDF\]](#)

Member Schaumber wrote in his dissent: "I will assume for purpose of this dissent that a party's offer to reimburse employees—in these circumstances—for lost wages is not per se objectionable. Nonetheless, I find that such an offer taints the election by unduly affecting the election's outcome if it is not made available to all employees eligible to vote." Member Schaumber agreed with his colleagues that the Union's providing an election day carpool to help voters get to the polls was not objectionable.

(Members Liebman, Schaumber, and Walsh participated.)

Chrill Care, Inc. (22-RC-12218; 340 NLRB No. 123) Montclair, NJ Nov. 20, 2003. The Board overruled the Employer's objections and certified Home Health Care, 1199, AFSCME as the collective-bargaining representative of all certified home health aides employed by the Employer at its Montclair, NJ facility. The tally of ballots for the election held August 1, 2002, shows that in a unit of approximately 412 eligible voters, 174 cast votes for and 170 cast votes against the Union, with no challenged ballots. [\[HTML\]](#) [\[PDF\]](#)

The Board agreed with the hearing officer that the Employer presented insufficient credible evidence to support its Objection 1, alleging that the Union engaged in intimidating or coercive conduct, and its Objection 2, which alleged that the Union engaged in objectionable conduct by photographing employees who came to the Employer's premises to vote in the election.

The Employer's Objection 3 alleged that the Union engaged in objectionable conduct by picketing or otherwise demonstrating on the date of the election at the Employer's place of business, thus blocking or intimidating employees who appeared to vote, and by recording the names of employees who appeared to vote. The Board agreed with the hearing officer that there is no evidence that any unit employee's access to the business, the Employer's premises, or the voting area was inhibited or blocked more than momentarily. Turning to the allegation of note taking or recording of voter's names, the Board agreed with the hearing officer, who found no evidence that any eligible voter witnessed the list keeping and, accordingly that no eligible voter could have been coerced by the Union's conduct.

The Board, in overruling the Employer's Objection 6, agreed with the hearing officer that employees witnessing union organizer Ramjas' conduct at an Employer offsite meeting about 2 weeks before the election, would not reasonably have felt coerced in the exercise of their free

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choice in the election. Ramjas briefly disputed the meeting and initially resisted the Employer's efforts to eject her, but was ultimately persuaded to leave once the police were called. The Board wrote: "We agree with the hearing officer that, rather than give employees the impression that the Employer was powerless against the force of the Union, this incident would be more likely to convince employees that the Employer was fully able to maintain control."

The Board adopted, in the absence of exceptions, the hearing officer's recommendations to overrule the Employer's Objections 4 and 5.

(Chairman Battista and Members Liebman and Schaumber participated.)

Detroit Newspaper Agency, d/b/a Detroit Newspapers (7-CA-40270, et al.; 340 NLRB No. 121) Detroit, MI Nov. 21, 2003. The Board adopted, absent exceptions, the administrative law judge's findings that the Respondent's discharges of James Schafranek in Case 7-CA-40556 and Gerald Kociemba in Case 7-CA-40331 violated Section 8(a)(1) and (3) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The Respondent is a joint operating partnership of the Detroit News and Detroit Free Press, two Detroit area newspapers. The Board accepted as the law of the case the D.C. Circuit's decision that a strike by the Respondent's employees (and the employees of the Detroit News and Detroit Free Press) was an economic strike. *Detroit Typographical Union No. 18 v. NLRB*, 216 F.3d 109 (2000), motion for reconsideration denied by unpublished decision (Aug. 31, 2000). The judge had issued his decision in the instant case before the Court granted the Respondents' petition for review and rejected the Board's finding at 326 NLRB 700 that unfair labor practices had caused the strike.

Members Liebman and Walsh revised the judge's remedy and recommended Order to grant the discriminatees the rights of returning economic strikers. *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970). They noted that their accompanying cease-and-desist order for the finding that the discharges of Kociemba and Schafranek violated Section 8(a)(1), is consistent with the Board's longstanding practice where a violation is found under *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964). Addressing Member Schaumber's disagreement with the cease-and-desist order, Members Liebman and Walsh wrote: "We see no reason for revisiting this practice here, particularly where the Respondent has not excepted either to the finding of the violation or to the remedy."

In his partial dissent, Member Schaumber said his colleagues' issuance of a cease-and-desist order lacked a rational basis. He pointed out that all three Members agreed with the judge's finding that the Respondent held a good-faith but mistaken belief that Kociemba and Schafranek had engaged in serious strike-related misconduct. Thus, the judge correctly found a

violation, applying a *Burnup & Sims* analysis. Member Schaumber explained how he would revise the order, saying the Board must refashion the order in this case and similar cases to remove the threat of contempt proceedings. He wrote:

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In this case and in all cases involving *Burnup & Sims*-type violations, there is no evidence that the employer failed to conduct an adequate investigation or otherwise prevented itself from discovering its mistake. On the contrary, the employer in these cases acts reasonably and in good faith, but errs. In effect, therefore, my colleagues order the Respondent not to make innocent mistakes in the future. It is tantamount to ordering the Respondent to be infallible. However, the absurdity of the order is not the worst of its drawbacks. A cease-and-desist order, once enforced by a court of appeals, becomes a vehicle for bringing contempt proceedings.

(Members Liebman, Schaumber, and Walsh participated.)

Charges filed by Teamsters Local 372 and Detroit Mailers Union No. 2040; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Detroit, Nov. 30 through Dec. 3, 1998 and March 18, 1999. Adm. Law Judge Richard A. Scully issued his decision March 13, 2000.

DHL Worldwide Express (29-RC-9845; 340 NLRB No. 122) Long Island City, NY Nov. 21, 2003. The Board held that DHL Worldwide Express (the Employer or DHL) is engaged in commerce within the meaning of the National Labor Relations Act and remanded the case to the Regional Director for further appropriate action. DHL is engaged in the business of package delivery by air and ground. The Employer contended that the petition filed under Section 9(c) of the Act by Teamsters Local 804 should be dismissed because it is subject to the jurisdiction of the Railway Labor Act (RLA). The Board requested the National Mediation Board (NMB) to determine the applicability of the RLA to the Employer. The NMB determined that DHL is not subject to the RLA because DHL is not controlled by or under common control with a carrier and thus, the control prong of the NMB's jurisdictional test was not satisfied. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

A-NIV Cab Co. d/b/a Las Vegas Limousine (28-CA-17748, et al.; 340 NLRB No. 120) Las Vegas, NV Nov. 20, 2003. The Board upheld the administrative law judge's recommended dismissal of the complaint, which alleged that the Respondent violated Section 8(a)(4), (3), and (1) of the Act by suspending and discharging Stephanie Maitland and imposing more onerous conditions of employment on its drivers; Section 8(a)(3) and (1) by suspending Maitland; and Section 8(a)(1) by threatening employees with discharge because of their union activities and because they filed charges or gave testimony under the Act and by interrogating employees about their union activities. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

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Charges filed by Stephanie Maitland, Julio Cavalcanti, and Michael Horrocks, Individuals; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Las Vegas, June 9-12, 2003. Adm. Law Judge Lana H. Parke issued her decision Aug. 22, 2003.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Consumer's Cooperative Association of EAU Claire (Food & Commercial Workers Local 12) Eau Claire, WI November 7, 2003. 18-CA-16902; JD-119-03, Judge Jane Vandeventer.

Healthcare Workers Local 250, SEIU (Cathedral Pioneer Church d/b/a Trinity House) Sacramento, CA November 13, 2003. 32-CB-5562; JD(SF)-83-03, Judge John J. McCarrick.

BLT Enterprises of Sacramento, Inc., d/b/a Sacramento Recycling & Transfer Station (Teamsters Local 150) Sacramento, CA November 14, 2003. 20-CA-31120-1; JD(SF)-84-03, Judge Clifford H. Anderson.

Mar-Zane, Inc. (Operating Engineers Local 103) Noblesville, IN November 17, 2003. 25-CA-28670; JD(ATL)-76-03, Judge Margaret G. Brakebusch.

Unites States Postal Service (an Individual) Hartford, CT November 18, 2003. 34-CA-10146, 10330; JD-107-03, Judge Wallace H. Nations.

Rockline Industries, Inc. (Food & Commercial Workers Local 2008) Fayetteville, AR November 21, 2003. 26-CA-20950; JD(ATL)-79-03, Judge George Carson II.

David Staviski d/b/a Chemung Valley Acoustical (Individuals) Erin, NY November 21, 2003. 3-CA-24227, 24231; JD-127-03, Judge Wallace H. Nations.

U.S. Information Services Inc. (Communications Workers Local 1106) Nyack, NY November 21, 2003. 2-CA-34668-1; JD(NY)-56-03, Judge Raymond P. Green.

Alandco Development Corp. d/b/a Senior Care at the Fountains (Food & Commercial Workers Local 56) Pennsauken, PA November 21, 2003. 4-CA-31269, 31502, 4-RC-20185; JD-124-03, Judge Benjamin Schlesinger.

Smurfit-Stone Container Corp. (an Individual) New Philadelphia, OH November 21, 2003. 8-CA-34009; JD-126-03, Judge C. Richard Miserendino.
