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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May 10, 2002 W-2842

CASES SUMMARIZED

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Dai-Ichi Hotel Saipan Beach, Saipan, CNMI

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(R-2453) NLRB Distributes $2 Million in Backpay to 61 Former Avondale Workers Under Settlement

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Pacific Micronesia Corporation d/b/a Dai-Ichi Hotel Saipan Beach (37-CA-4926, et al.; 337 NLRB No. 66) Island of Saipan, CNMI April 29, 2002. The Board held, contrary to the administrative law judge, that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing a misconduct notice to Hermie Coronejo and by not renewing the employment contracts of nonresident employees Coronejo, Rosanna Cayabyab and Luisa Adao because of their union activities. The Board, in concluding that the Respondent lawfully failed to renew the employment contracts of 36 other nonresident employees, agreed with the judge's initial decision that the Respondent demonstrated that a reduction in force was necessary due to the downturn in the Asian economy and that it was required to replace seven of the alleged discriminatees with available, eligible local employees. [HTML] [PDF]

This case involves allegations that the Respondent violated Section 8(a)(1), (3), (4), and (5) in response to an organizational campaign by Hotel and Restaurant Employees Local 5. In a decision reported at 326 NLRB 458 (1998), the Board certified the Union as the exclusive representative of the Respondent's employees. In 1999, the Board held that the Respondent violated Section 8(a)(5) and (1) by refusing to bargain with the Union following the certification. 327 NLRB No. 131. The D.C. Circuit in June 2000 invalidated the Union's certification and denied enforcement of the Board's bargaining order. *Dai-Ichi Hotel Saipan Beach v. NLRB,* 219 F.3d 661 (D.C. Cir. 2000).

While the judge's 1999 initial decision was pending before the Board on exceptions by both parties, the Board granted the General Counsel's motion to reopen the record in light of newly discovered evidence and remanded the proceeding to the judge. The General Counsel alleged that Hideo Fujii, a manager of a manpower company that supplied employees to the Respondent, perjured himself in the initial hearing and concealed evidence from the General Counsel that the Respondent had schemed to replace prounion Filipino employees with employees from Nepal in order to defeat the Union in the 1998 Board election. The General Counsel alleged that newly discovered evidence refuted the Respondent's *Wright Line* defense that the judge accepted in recommending dismissal of the 8(a)(3) allegations regarding the Respondent's decision not to renew the employment contracts of the alleged discriminatees.

Based on his assessment of the evidence presented at the reopened hearing, the judge discredited Fujii on all material allegations and concluded that the Respondent did not participate in a scheme to replace Filipino nonresidents with workers from Nepal in order to win the 1998 election. He sua sponte reconsidered his initial decision, modified his earlier findings, and held that the Respondent unlawfully failed to renew the contracts of 28 of the nonresident discriminatees in order of seniority.

In light of the court's decision, the Board dismissed all of the Section 8(a)(5) allegations. It found no basis for reversing the judge's discrediting of Fujii's testimony, but it decided that he erred in finding a violation based on the Respondent's failure to select employees for nonrenewal in order of seniority. Assuming arguendo that the judge had the authority to reconsider his initial decision, the Board found his seniority rationale is "inconsistent" with established precedent. It noted that the General Counsel relied on other bases for his theory of the case and did not endorse the judge's seniority analysis in his exceptions to the supplemental decision. Further, the failure to lay off employees in order of seniority cannot constitute evidence of discriminatory motive in the absence of evidence that seniority has been used in the past. There is no evidence that the Respondent ever used seniority as a basis for any employment decision.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charges filed by Hotel & Restaurant Employees Local 5 and Commonwealth Labor Federation; complaint alleged violation Section 8(a)(1), (3), (4) and (5). Hearing at Saipan on various dates between April 26 and May 14, 1999 and March 12 and 23, 2001. Adm. Law Judge James L. Rose issued his decision Sept. 15, 1999 and supplemental decision July 2, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Sysco Food Services - Albany, A Division of Sysco Corporation (Teamsters Local 294) Albany, NY April 26, 2002. 3-CA-23249; JD(NY)-27-02, Judge Joel P. Biblowitz.

Southwestern Bell Telephone Company (Communications Workers Local 6333) Overland Park, KS April 26, 2002. 17-CA-21366; JD(SF)-34-02, Judge Mary Miller Cracraft.

United Rock Products (Operating Engineers Local 12) Irwindale, Ca April 19, 2002. 21-CA-34284; JD(SF)-32-02, Judge William L. Schmidt.

Deutsche Post Global Mail, Ltd. (Manufacturing, Production & Service Workers Local 24) Chicago, IL April 30, 2002. 13-CA-39528, 39750; JD-51-02, Judge Robert A. Giannasi.

Superior of Missouri, Inc. (Teamsters Local 162) St. Louis, MO May 2, 2002. 14-CA-25421; JD-48-02, Judge Robert A.

Pulcini.

C & B Flooring Associates, L.L.C. (Teamsters Local 807) Albertson, NY May 3, 2002. 29-CA-24357; JD(NY)-28-02, Judge Eleanor MacDonald.

NO ANSWER TO COMPLIANCE SPECIFICATION

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

Triple C Maintenance, Inc. (17-CA-19243; 337 NLRB No. 67) Sapulpa, OK May 2, 2002.