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 24, 2002 W-2844

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

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CEC, Inc. (17-CA-20850; 337 NLRB No. 76) Omaha, NE May 13, 2002. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Elevator Constructors International with requested information which was relevant and necessary to the Union's duties as the exclusive representative

of the Respondent's elevator constructor mechanics and elevator helpers. No exceptions were filed to the judge's finding that the requested information was relevant to the Union's inquiry into the relationship between the Respondent and Access Elevator, Inc., a nonunion elevator business. The Board did not pass on the judge's conclusion that the parties' contract demonstrates that the requested information was presumptively relevant.[HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by the Elevator Constructors International; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Omaha on May 22, 2001. Adm. Law Judge Albert A. Metz issued his decision Aug. 10, 2001.

* * *

Hobart Crane Rental, Inc. and Hobart Welding and Fabrication, Inc., a Single Employer (13-CA-37664, 37715; 337 NLRB No. 77) Hobart, IN May 10, 2002. Agreeing with the administrative law judge that the Board lacks jurisdiction over the Respondent, the Board dismissed the consolidated complaint on that basis and found it unnecessary to pass on the merits of the alleged violations. The judge found that the General Counsel failed to prove that Hobart Crane Rental, Hobart Welding and Fabrication, or both of them together, met the Board's jurisdictional standards for nonretail enterprises. The consolidated complaint alleged that the two companies constituted a single employer and that Hobart Crane violated Section 8(a)(5) and (1) of the Act by failing to provide the Union with information regarding the single employer allegation and Section 8(a)(3) and (1) by discriminatorily laying off two employees because of their union activities.[HTML] [PDF]

Members Liebman and Bartlett wrote in deciding not to modify the case caption by deleting the phrase "a Single Employer," as proposed by Member Cowen: "The single-employer reference in the caption is simply an allegation, reflecting the General Counsel's styling of the case, and does not indicate any determination by the Board as to the single-employer issue." Member Cowen would amend the case caption by deleting "Single Employer." He believes "it is inappropriate to include within a case caption a substantive allegation of the complaint. Such a practice serves no legitimate purpose, and could tend to give the appearance that the Board has prejudged the relationship among the parties."

(Members Liebman, Cowen, and Bartlett participated.)

Charges filed by Operating Engineers Local 150; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Chicago, June 13-15, 2000. Adm. Law Judge Marion C. Ladwig issued his decision Jan. 4, 2001.

* * *

Operating Engineers Local 12 (Kiewit Industrial) (28-CB-5193; 337 NLRB No. 83) Boulder City, NV May 15, 2002. Reversing the administrative law judge, the Board dismissed the complaint, finding that the Respondent did not violate Section 8(b)(1)(A) and (2) of the Act, as alleged, by causing Kiewit Industrial to discriminate against employee Alan Wayne because of Wayne's internal union activities. On August 9, 1999, Union Business Representative David Garbarino visited the Respondent's jobsite, met with Terry Inman, a Kiewit supervisor, and had a discussion that was the subject of the instant charge. There is no direct evidence that the Respondent sought to have Kiewit lay off Wayne. The judge inferred from Garbarino's comments to Inman that the Respondent sought that result. The Board concluded that no such inference is reasonable based on the record before it and applicable case law.[HTML] [PDF]

Garbarino asked how the job was going, and Inman replied that it was going fine. Garbarino then asked if more operators were going to be hired and Inman responded probably not. Garbarino inquired of Inman how the "New York boy" (Wayne) was doing. Inman asked Garbarino what piece of equipment he operated, and Garbarino told him that Wayne operated the Bobcat. Garbarino added that Wayne "was on the A board" (the union advisory board) and that he was "at odds with the Union." Garbarino asked if Wayne would be laid off when the Bobcat work was done. Inman replied that he would be laid off if no other work were available for him. Later that day, Inman asked two of his supervisors about Wayne and was told that he was a "real good operator."

The Board decided that Garbarino's comments, whether standing alone or in the context of the conversation with Inman, did

not display animus toward Wayne and did not logically convey to Kiewit that the Respondent wished the Employer to discriminate against Wayne. Nor was it reasonable to infer that Garbarino's comment that Wayne was "at odds with the union"-without more-would suggest to Inman that Wayne was a troublesome employee. Although the statement reflected that there were some differences between Wayne and the Respondent, it did not establish that the Respondent bore animus against Wayne because of the differences, the Board explained. Even if the statement established such animus, the record did not establish that the Respondent was asking Inman to lay off Wayne because of that animus.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by Alan Wayne, an individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at Las Vegas on June 27, 2000. Adm. Law Judge Thomas Michael Patton issued his decision Nov. 7, 2000.

* * *

7UP of Cincinnati, a Unit of Brooks Beverage Management, Inc. (9-CA-38213; 337 NLRB No. 80) Cincinnati OH May 13, 2002. Affirming the administrative law judge's recommendation, the Board dismissed the complaint allegation that the Respondent violated Section 8(a)(1) and (3) of the Act by refusing to hire Steven C. Saunders since August 14, 2000 because of his activities for Teamsters Local 1199.[HTML] [PDF]

The Respondent argued that Saunders was not hired because Distribution Manager Frank Doyle felt he would not be a long-term employee. Doyle based this conclusion on two factors: (1) Saunders told Doyle that he needed a job in the bargaining unit so he could hopefully get a position on the executive board and eventually run for union president again; and (2) Doyle was skeptical about how long Saunders would remain in the merchandiser position as he was willing to take close to a 50 percent cut in pay from the approximately $45,000 he made as full-time union president. In Doyle's experience, individuals who took a large cut in pay would be continually looking for alternative employment to equal their prior wages.

The judge found that refusing to hire an individual who it was contemplated would not remain in the merchandiser position for a long period of time and who would be taking a substantial cut from historical wage levels are legitimate reasons to deny employment. Therefore, the judge held that the Respondent's refusal to hire Saunders was for legitimate business reasons rather than because he sought employment in order to get back in the Union so he could eventually run for union office again.

(Chairman Hurtgen and Members Cowen and Bartlett participated.)

Charge filed by Steven C. Saunders, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cincinnati on Aug. 30, 2001. Adm. Law Judge Bruce D. Rosenstein issued his decision Oct. 29, 2001.

* * *

Shaw's Supermarkets, Inc. (1-CA-37507; 337 NLRB No. 73) Wells, ME May 10, 2002. The Board adopted the administrative law judge's recommendation and dismissed the complaint alleging that the Respondent violated the Act by refusing to execute a collective-bargaining agreement it reached with Food and Commercial Workers Local 791 on June 26, 1998 and tendered by the Union for execution on November 23, 1998. The Board agreed with the judge's finding that the record evidence did not establish that the document submitted by the Union to the Respondent reflected a meeting of the minds assertedly reached by the parties on June 26. It found it unnecessary to pass on the judge's finding that the Respondent's interpretation of the agreement reached on June 26 was correct.[HTML] [PDF]

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charge filed Food & Commercial Workers Local 791; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Boston, June 5-8, 2000. Adm. Law Judge Raymond P. Green issued his decision Sept. 13, 2000.

* * *

Hospital Dr. Susoni, Inc. (24-CA-8204, 8524; 337 NLRB No. 82) Arecibo, PR May 15, 2002. The Board affirmed the administrative law judge's recommended order dismissing the complaint allegations that the Respondent violated Section 8(a)(1) of the Act by maintaining photographs of employees engaged in union activity and Section 8(a)(3) and (1) by discharging employees Jose Santiago and Maritza Ramos. The judge found that Santiago and Ramos, who worked for the Respondent as registered nurses, were open union supporters and the Respondent was aware of their union activity. He did not credit the testimony offered by the General Counsel to show that the Respondent harbored antiunion animus. Nor did he infer an unlawful motive from the Respondent's asserted reasons for their discharges.[HTML] [PDF]

The judge concluded that the Respondent fired Santiago because he did not renew his professional license. While the Respondent had a policy of allowing employees who failed to renew their licenses to transfer into other positions, the policy applied only when there were openings available. The judge found that the General Counsel failed to show that any such opening existed at the time that Santiago's license lapsed and, accordingly, that the General Counsel failed to meet his burden under *Wright Line.*

The Respondent asserted that it discharged Ramos because she put hospital patients' lives at risk by, without oral or written instructions, removing a fetal monitor from a patient who was 38 weeks pregnant and had a high fever and transferring the patient out of the delivery room. The judge found Ramos acted in accordance with existing procedures and was fired for doing so, but that it did not necessarily compel a finding that her discharge was motivated by antiunion animus. After examining the entire case, he said there appeared to be other reasons why the Respondent might have terminated Ramos despite her apparent compliance with hospital policies. The judge, in declining to infer that Ramos' union activities were a motive in her discharge, noted particularly the absence of any credible evidence of antiunion animus and concluded that the General Counsel failed to establish his initial burden under *Wright Line.*

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charges filed by Unidad Laboral de Enfermeras(os) y Empleados de la Salud; complaint alleged violation of Section 8(a)(1) and (3). Hearing in San Juan on Oct. 16-19, 2001. Adm. Law Judge William G. Kocol issued his decision Dec. 27, 2001.

* * *

Consolidated Delivery & Logistics, Inc. (22-CA-23543; 337 NLRB No. 81) Teterboro, NJ May 15, 2002. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees who engaged in a strike at the Respondent's Neuman jobsite in Teterboro, NJ for recognition of Teamsters Local 418, and by refusing to reinstate strikers on their unconditional offers to return to work.[HTML] [PDF]

The Board agreed with the judge that the Respondent unlawfully discharged the striking drivers by distributing a memorandum on August 6, 1999 that stated unambiguously "you have been permanently replaced." It is undisputed that at the time the memo was distributed, the

Respondent had not hired any replacements or even made contact with Labor Ready, the employment service that it now contends replaced the drivers. The Respondent's first contact with Labor Ready occurred two days later on August 8. Agreeing with the judge that the Respondent unlawfully refused to reinstate strikers upon their unconditional offer to return to work, the Board found that the Respondent failed to prove that it permanently replaced the strikers by entering into a permanent subcontract with Labor Ready.

The Board modified the judge's recommended Order (1) to reflect that all strikers discharged on August 6, 1999 (including those who were later refused reinstatement) shall be made whole from the date of the unlawful discharge; (2) by issuing its standard reinstatement order requiring the Respondent to reinstate the discriminatees to their former positions or, if those positions no longer exist, to substantially equivalent positions; and (3) to require that the Respondent mail copies of the notice only to those current and former employees who were employed at the Neuman site at any time since August 6, 1999.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by Teamsters Local 418; complaint alleged violation of Section 8(a)(3) and (1). Hearing at Newark, March 14-15, 2000. Adm. Law Judge Steven Davis issued his decision Aug. 3, 2000.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Toma Metals, Inc. (Steelworkers District 10) Johnstown, PA May 10, 2002. 6-CA-32055, et al.; JD-22-02, Judge Paul Buxbaum.

American Residential Services of Indiana, Inc., Subsidiary of the ServiceMaster Company (Sheet Metal Workers Local 20) Indianapolis, IN May 1, 2002. 25-CA-26991-1, 26992-1; JD-55-02, Judge Karl H. Buschmann.

RC Aluminum Industries, Inc. and RC Erectors, Inc. (Iron Workers Locals 272 and 698) Miami, FL May 14, 2002. 12-CA-21207, 21453; JD(ATL)-28-02, Judge George Carson II.

Kaiser Aluminum & Chemical Corporation (Steelworkers) Houston, TX May 10, 2002. 32-CA-17041; JD(SF)-21-02, Judge Michael D. Stevenson.

Community Health Services, Inc., d/b/a Mimbres Memorial Hospital and Nursing Home (Steelworkers District 12, Subdistrict 2) Deming, NM May 13, 2002. 28-CA-16762, et al.; JD(SF)-38-02, Judge Lana H. Parke.

Western Great Lakes Pilots Association (Longshoremen [ILA] Local 2000) Superior, WI May 15, 2002. 18-CA-15976-1; JD-57-02, Judge William J. Pannier III.

Eagle Transport Corporation (Teamsters, Georgia-Florida Conference) Cocoa and Jacksonville, FL May 15, 2002. 12-CA-21397-3, et al.; JD(ATL)-27-02, Judge Margaret G. Brakebusch.

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NO ANSWER TO COMPLAINT

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

Nickie J. Esztergalyos d/b/a Esztergalyos Enterprises, Inc. (Carpenters Local 24) (34-CA-9718; 337 NLRB No. 74) Steamboat Springs, CO May 13, 2002.

Restaurant El Original (Union de Tronquistas de Puerto Rico Local 901) (24-CA-8944-1, et al.; 337 NLRB No. 79) Rio Piedras, PR May 13, 2002.

U.S. Extrusions & Steel Corp. (Steelworkers Local 4564-06) (8-CA-32684, 32833; 337 NLRB No. 75) Girard, OH May 13, 2002.

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NATIONAL LABOR RELATIONS BOARD
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