

## 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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June 21, 2002

W-2848

**CASES SUMMARIZED**

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[Americorp](#), Parsippany, NJ  
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*Americorp* (22-CA-24532; 337 NLRB No. 99) Parsippany, NJ June 10, 2002. The Board agreed with the administrative law judge's finding that the Respondent discharged striking employees in violation of Section 8(a)(3) and (1) of the Act. The Respondent excepted to the judge's conclusion that the striking employees were unlawfully discharged based on two points -- both rejected by the Board: (1) that the Respondent did not have knowledge of any picketing on April 9, 2001, when it made the decision to discharge the employees, either because the picketing did not occur or, if it occurred, the Respondent did not see it; and (2) that prior to April 9 the Respondent had enforced its "No Show/No Work" policy, which provides if an employee does not report for work, the employee is terminated. [\[HTML\]](#) [\[PDF\]](#)

No exceptions were filed to the judge's findings that (1) the economic strike converted into an unfair labor practice strike when the Respondent discharged the striking employees; and (2) the Respondent violated Section 8(a)(3) and (1) by refusing to

reinstate the strikers on their making an unconditional offer to return to work.

(Members Liebman, Cowen and Bartlett participated.)

Charge filed by Service Employees Local 32B-32J; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Newark, Aug. 6, 8-9 and Sept. 5-6, 2001. Adm. Law Judge D. Barry Morris issued his decision Jan. 4, 2002.

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*Graphic Communications Workers Local 1-M* (Bang Printing, Inc.) (18-CB-4076-1; 337 NLRB No. 100) Brainerd, MN June 11, 2002. The administrative law judge found, and the Board agreed, that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act by reporting the possibility of sexual harassment by Timothy Kelm to his Employer in retaliation for his dissident activities. Citing *General Motors Corp.*, 272 NLRB 705, 711 (1984), the Board affirmed the judge's finding that Union Vice President Robert Stanton's failure to investigate Kelm's conduct, in the absence of any basis to suspect that Kelm had recently engaged in misconduct, is a factor indicating the Union's unlawful motivation. [\[HTML\]](#) [\[PDF\]](#)

Given its finding that the report was given for retaliatory reasons, the Board declined to rule on whether a union would otherwise have a duty under the NLRA to investigate allegations that a represented employee engaged in sexual harassment before reporting such allegations to an employer or under Title VII of the Civil Rights Act of 1964 to immediately report, i.e., report without investigation, such allegations to the employer.

(Chairman Hurtgen and Members Liebman and Cowen participated.)

Charge filed by Timothy Kelm, an Individual; complaint alleged violation of Section 8(b)(1)(A) and (2). Hearing at Brainerd on April 25, 2001. Adm. Law Judge William J. Pannier III issued his decision July 31, 2001.

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*Matanuska Electric Association, Inc.* (19-CA-26525; 337 NLRB No. 101) Anchorage, AK June 13, 2002. The Board adopted the administrative law judge's recommendations and dismissed the complaint allegation that the Respondent violated Section 8(a)(5) of the Act by bargaining in bad faith, declaring an impasse in negotiations, and implementing its April 29 proposal on June 3, 1999. The judge wrote: "Though the question of impasse here is difficult, . . . I conclude that the Union's bargaining tactics made reaching an agreement a virtual impossibility. I conclude that the Respondent had no reason to believe that the Union would change tactics in the foreseeable future and therefore was permitted to declare impasse and implement its final offer." [\[HTML\]](#) [\[PDF\]](#)

The Respondent employs about 120 employees in four bargaining units, all of which are represented by the Union. This case concerns only the "outside unit" (30 linemen/wiremen, meter readers, mechanics, and others). The last agreement covering the outside unit expired on December 31, 1998, but it was extended by agreement during negotiations for a successor until the Respondent implemented its final proposal. The judge found that although the parties reached tentative agreement on about 50 less important clauses, they were at an impasse when negotiations concluded in May because they could not agree on two critical issues -- the Respondent's desire to change its ability to subcontract work and to eliminate all past practices. The Respondent argued that the existing language gave the Union a virtual veto on its ability to subcontract. The Union consistently and adamantly rejected the Respondent's proposal and instead proposed even more restrictive language. The Respondent declared an impasse on April 12.

(Chairman Hurtgen and Members Cowen and Bartlett participated.)

Charge filed by Electrical Workers (IBEW) Local 1547; complaint alleged violation of Section 8(a)(5). Hearing in Anchorage, May 22-24, 2001. Adm. Law Judge James L. Rose issued his decision Aug. 29, 2001.

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*Tweddle Litho, Inc.* (7-UC-552; 337 NLRB No. 102) Clinton Township, MI June 13, 2002. Chairman Hurtgen and Member Bartlett granted the Employer-Petitioner's request for review of the Regional Director's decision deferring this case to arbitration on the unit clarification petition, and remanded the case to the Regional Director for hearing on the issues involved. Member Liebman dissented. [[HTML](#)] [[PDF](#)]

The Employer decided to do the packaging, labeling and shipping of books itself when the company that previously did the work raised its price. The Employer leased a nearby facility and hired 20 permanent and some temporary employees. Subsequently, the Union (Graphic Communications Workers) filed a grievance, claiming that the employees at the new facility were doing bargaining unit work and that the Employer "failed and refused to treat new employees performing work covered by its current collective-bargaining agreement with the Union as being part of the bargaining unit . . . ." The Employer denied the grievance and filed the instant petition seeking to clarify the existing bargaining unit to exclude the employees at the new facility.

Chairman Hurtgen and Member Bartlett, citing *Williams Transportation Co.*, 233 NLRB 837 (1977), and *Ziegler*, 333 NLRB No. 114 (2001), agreed with the Employer that the issue posed by the grievance is whether the new employees are to be accreted to the contractual bargaining unit or added because they perform the same functions that historically have been performed by unit employees-which is a representation issue for Board determination. They saw no need to arbitrate.

Contrary to her colleagues, Member Liebman, in dissent, stated that deferring to arbitration, at least initially, would be the better course here. She said that a question of contract interpretation is posed, i.e., whether the work performed by newly-hired employees is covered by the Employer's collective-bargaining agreement with the Union. Member Liebman pointed out that resolving that issue may lead to representation-related questions, which under current law are matters for the Board, but it is not inevitable since the parties may reach an accommodation. Accordingly, at this stage, she would allow the parties' agreed-upon grievance and arbitration procedure to operate.

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

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### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

*Desert Aggregates* (Operating Engineers Local 3) Ducor, CA May 28, 2002. 32-CA-18653, 18726; JD(SF)-40-02, Judge Jay R. Pollack.

*Ashland Construction Company, Inc.* (Operating Engineers Local 139) Ashland, WI June 10, 2002. 18-CA-16145-1, 16249-1; JD-63-02, Judge C. Richard Miserendino.

*First Legal Support Services, LLC* (Longshoremen [ILWU] Local 6) San Francisco, CA June 12, 2002. 20-CA-29922-1; JD(SF)-44-02, Judge James M. Kennedy.

*BHP (USA) Inc. d/b/a BHP Coal New Mexico* (Operating Engineers Local 953) Farmington, NM June 12, 2002. 28-CA-17103, 17364; JD(SF)-42-02, Judge James L. Rose.

*North Star Steel Company* (Auto Workers [UAW]) Detroit, MI June 11, 2002. 7-CA-43609(1)(2), 44077; JD-64-02, Judge Paul Bogas.

*National Association of Letter Carrier Local 36* (an Individual) New York, NY June 12, 2002. 2-CB-18378; JD(NY)-36-02, Judge Howard Edelman.

*Crittenton Hospital* (Office Employees Local 40) Rochester, MI June 13, 2002. 7-CA-44284; JD-53-02, Judge George Alemán.