

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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July 12, 2002

W-2851

CASES SUMMARIZED

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Anheuser-Busch, Inc. (3-CA-21796, et al.; 337 NLRB No. 121) Baldwinsville, NY July 5, 2002. The Board granted in part and denied in part the Respondent's motion for reconsideration of its underlying decision and order (337 NLRB No. 2 (2001)), which adopted the administrative law judge's decision that the Respondent violated Section 8(a)(1) of the Act and included a cease-and-desist order and an attached notice to employees for posting. Specifically, the judge found, with Board approval, that the Respondent unlawfully refused to permit employee Patrick Lamirande his choice of steward at two disciplinary meetings, threatened to discharge employee Brian Meany for engaging in protected speech at one of the Respondent's corporate communications meetings, and threatened employee Joseph Rimulado with reprisal for filing charges with the

Board. [\[HTML\]](#) [\[PDF\]](#)

The Board denied as raising nothing not previously considered and as lacking in merit, that portion of the Respondent's motion contending that the Board erred in adopting the judge's unfair labor practice findings. The Board granted that portion of the motion seeking correction of two inadvertent errors by the Board and the judge, and made these modifications.

(1) In reproducing the judge's decision, present references to Kidde Inc., in the paragraph beginning at the bottom of the right column on page 5, were incorrectly substituted for GHR Energy Corp., 294 NLRB 1011 (1989), in the original judge's decision. The Board corrected the published judge's decision so that it reads as it appears as written when he issued the decision. See 337 NLRB No. 23, slip op. at 5.

(2) The language of the Board's and the judge's notice failed to conform to the language of his recommended Order, which was adopted by the Board. The Board substituted an attached corrected notice, which has also been modified with its decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001), for the notice attached to the earlier decision.

(3) The Respondent also argued that the Order and notice provisions regarding Meany are overbroad and could be interpreted as encompassing unprotected activity at corporate communications meetings. The Board modified its prior Order and substituted the following as paragraph 1(b): "(b) Threaten to discharge an employee if he or she engages in concerted protected activity, including engaging in such activity when speaking at corporate communications meetings."

The General Counsel argued that the Respondent waived its right to present the third argument because it did not file exceptions to the notice and order as they appeared in the judge's decision. Citing *Indian Hills Care Center*, 321 NLRB 144 fn. 3 (1996), the Board disagreed, stating: "It is well established that the Board has full authority over the remedial aspects of its decisions, even in the absence of exceptions."

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

* * *

Consumers Energy Co. (7-RC-22022; 337 NLRB No. 120) Alma, Saginaw, Grand Rapids, Royal Oak, and Lansing, MI July 5, 2002. Members Liebman and Bartlett overruled the Employer's objection, agreeing with the hearing officer that the Board Agent properly denied Brian K. Vandenberg an opportunity to vote because he arrived after the scheduled 3 p.m. closing of the polls. See *Laidlaw Transit, Inc.*, 327 NLRB 315 (1999), and *Monte Vista Disposal Co.*, 307 NLRB 531 (1992). The majority certified the Utility Workers (winner of the August 15, 2001 election by a 137-136 vote) as the exclusive representative of the Employer's employees in the appropriate unit. Member Cowen, dissenting, would set aside the election and remand this case to the Regional Director to conduct a second election. [\[HTML\]](#) [\[PDF\]](#)

In its objection, the Employer contended that Vandenberg was precluded from casting a ballot even though he claimed that he arrived prior to the vote closing time in the voting area. The parties' observers all testified that the Board Agent closed the polls at 3 p.m., according to his watch, and that Vandenberg arrived in the polling area shortly after this closing time. Vandenberg testified that he "scanned in" at 2:59 p.m. at a clock located 30 feet from the closed door to the polling area but did not protest to the Board Agent that he had arrived before the proper closing time. Member Cowen disagreed with his colleagues that this close election, in a relatively large unit with a one-vote margin victory for the Union, should be certified since there is a significant possibility that Vandenberg, a potentially determinative voter, has been disenfranchised by the Board Agent's actions. Member Cowen noted there is insufficient evidence to establish that the Board Agent's personal watch reflected the correct time. He noted also that the Board Agent deviated from appropriate casehandling procedures by failing to designate an official timepiece prior to the balloting. Member Cowen wrote: "As I see this case, we can either conduct a new election now, or risk being directed to do so by the U.S. Court of Appeals for the Sixth Circuit following a subsequent unfair labor practice proceeding. Simply stated, an early election is preferable to one directed several years from today."

Members Liebman and Bartlett agreed with the hearing officer that the Board's Agent's watch was the recognized official timepiece, even if he failed formally to designate it as such. They found Vandenberg's testimony does not prove that the watch was inaccurate or that Vandenberg, who had two young children with him, must have gone from the clock's location to the

polling area before the clock struck 3 p.m. Members Liebman and Bartlett reasoned even if they agreed with Member Cowen that the evidence is insufficient to show whether Vandenberg actually arrived late, they would adopt the hearing officer's recommendation to overrule the Employer's objection, explaining: "It is the Employer's burden, as the objecting party, to prove that there has been misconduct that warrants setting aside the election. . . . If the evidence is insufficient then the Employer has failed to meet its burden."

(Members Liebman, Cowen, and Bartlett participated.)

* * *

Stage Employees IATSE, Greater New Orleans Stage, Motion Picture, Television and Exhibition Employees Local 39 (Shepard Exposition Services, Inc.) (15-CD-304; 337 NLRB No. 119) New Orleans, LA July 2, 2002. Relying on the factors of Employer preference and current assignment, Employer past practice, and area practice, the Board decided that Shepard's employees represented by the Stage Employees, rather than those represented by the Carpenters and its Local 1846, are entitled to perform the work in dispute. [\[HTML\]](#) [\[PDF\]](#)

The work in dispute concerns the assignment of: In the Greater New Orleans area, including the parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles and Plaquemines, the uncrating, erection, dismantling and recreating of all built-up fabricated displays at exhibit sites, rigging, and carpet installation and removal; the handling and erection of all hard wall booths, pegboards, sheetrock and/or specially built booths on exhibit sites where any material is attached together to form a display; the building and/or installation of all platforms, walls, turntables, counters and/or any item fabricated or built on exhibit sites, the laying out and marking of all lines needed to perform the above-described work; and the loading, unloading, and movement of the Employer's equipment and material, operation of all fork and pallet lifts and related equipment. Also included are the installation, dismantling and operation of scenery, curtains, properties, electrical effects, and the operation of spotlights; installation and dismantling of exhibits, displays, booths, decorations; and the installation, dismantling and operation of sound accessories, motion, T.V. and video tape productions.

(Chairman Hurtgen and Members Cowen and Bartlett participated.)

* * *

Whirlpool Corp. (8-CA-28612; 337 NLRB No. 117) Findlay, OH July 5, 2002. The Board affirmed the administrative law judge's findings that the Respondent violated Section 8(a)(3) of the Act by disciplining employees David Hamilton and Jerry Pore. Members Liebman and Bartlett agreed with the judge that a violation was established under Wright Line, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), and did not pass on Chairman Hurtgen's contention that the discipline should be analyzed pursuant to the standard set forth in *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964). Members Liebman and Bartlett noted that no party contended that Wright Line is not the appropriate analysis. Assuming that *Burnup & Sims* is applicable, they agreed with the Chairman that a violation would be established under that standard as well. [\[HTML\]](#) [\[PDF\]](#)

Members Liebman and Bartlett also affirmed the judge's finding that Shift Supervisor Dick Kretz violated Section 8(a)(1) by informing employees that they were not allowed to distribute union literature on company property and, accordingly entered a remedial order in this respect. Chairman Hurtgen found that the Respondent's conduct does not warrant a remedial order and would dismiss the allegation, citing *American Federation of Musicians Local 176 (Jimmy Wakely)*, 202 NLRB 620 (1973).

(Chairman Hurtgen and Members Liebman and Bartlett participated.)

Charge filed by the Steelworkers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Findlay on Feb. 15, 2000. Adm. Law Judge Earl E. Shamwell, Jr. issued his decision Aug. 9, 2000.

* * *

Bouille Clark Plumbing, Heating, and Electric, Inc. (3-CA-22761; 337 NLRB No. 118) Elmira, NY July 5, 2002. Affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by repudiating

collective-bargaining agreements in effect between the Southern Tier Chapter of the National Electrical Contractors Association (NECA) and Electrical Workers (IBEW) Local 139. [\[HTML\]](#) [\[PDF\]](#)

The NECA and their bargaining partner, the IBEW, have two types of agreements relevant to this case: 1) inside construction agreements govern all electrical construction work inside the property line of a worksite, except work performed by linemen and 2) residential wiring agreements govern electrical work performed on residential construction not exceeding four stories in height. The residential wiring agreements provide that all signatory contractors must also sign and abide by the provisions of the more comprehensive inside construction agreements.

The judge found that the Respondent assented to become a member of NECA on January 2, 1996 and that it effectively withdrew its consent for NECA to bargain on its behalf on February 8, 2000. Thus, he concluded that the Respondent was bound by the residential wiring agreements in effect between NECA and Local 139 from January 1996 through May 31, 2000, but not thereafter; and that the Respondent was bound by the terms of the inside construction agreements from January 1996 until the current inside agreement terminates on May 31, 2002. He recommended that the Respondent be ordered to make whole employees, hiring hall applicants who should have been employed, and the Union for any losses they may have suffered as a result of the Respondent's failure to adhere to these agreements since January 2, 1996. The Board modified the judge's recommended Order to reflect the manner in which backpay due to unit employees and benefits funds and any interest shall be computed.

In exceptions, the General Counsel requested that the Respondent "reimburse employees who are entitled to backpay for any additional federal and/or state tax liability resulting from the lump sum payment of their backpay awards." The Board declined to consider such a proposed remedy at this time as it would involve a change in Board law, which should be resolved after a full briefing by all affected parties. There has not been such briefing in this case.

(Chairman Hurtgen and Members Liebman and Bartlett participated)

Charge filed by Electrical Workers (IBEW) Local 139; complaint alleged violation of Section 8(a)(1) and (5). Hearing in Elmira, June 27-28, 2001. Adm. Law Judge Paul Buxbaum issued his decision Oct. 4, 2001.

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LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Kellogg, Brown & Root, Inc. (an Individual) Decatur, AL July 2, 2002. 10-CA-33272; JD(ATL)-35-02, Judge Keltner W. Locke.

Contract Carriers Corp., et al. (Teamsters Local 142) Gary, IN July 2, 2002. 13-CA-39900, 39932; JD-71-02, Judge C. Richard Miserendino.

Cab Associates (Teamsters Local 282) Brooklyn, NY July 2, 2002. 29-CA-24331; JD(NY)-42-02, Judge Jesse Kleiman.

Albertson's, Inc. (Food & Commercial Workers Local 7, et al.) Western United States July 3, 2002. 27-CA-13390, et al.; JD(SF)-46-02, Judge Clifford H. Anderson.

United States Postal Service and Mail Handlers Union (Individuals) Roanoke, VA July 3, 2002. 11-CA-19127(P), et al., 11-CB-3163(P), et al.; JD(ATL)-36-02, Judge George Carson II.

National Express Corp. d/b/a ATC/Forsythe & Associates, Inc. (Individuals) Tempe, AZ June 27, 2002. 28-CA-17291, 17667; JD(SF)-45-02, Judge James L. Rose.

Guard Publishing Co. d/b/a The Register Guard (Eugene Newspaper Guild, CWA Local 37194) Eugene, OR June 27, 2002. 36-CA-8919-1; JD(SF)-47-02, Judge Jay R. Pollack.

Bunting Bearings Corp. (Paper, Allied Industrial, Chemical and Energy Workers Local 6-0293) Kalamazoo, MI July 5, 2002.
7-CA-43996, et al.; JD-73-02, Judge Arthur J. Amchan.

NO ANSWER TO COMPLAINT

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

Park Drop Forge, Division of Park-Ohio Industries, Inc. (Boilermakers Lodge 1086) (8-CA-32497; 337 NLRB No. 115)
Cleveland, OH July 2, 2002.